TABLE OF CONTENTS

SUMMARY
BRIEFLY – THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative agency rulemaking actions from August 31, 1982, to November 2, 1984. Although concern was expressed over the rulemaking procedures followed by some agencies, no formal objections to rules were filed. Because of the requirements of the code publication process, the Council recommends a bill to provide for four copies of the North Dakota Administrative Code to be distributed to the Legislative Council by the Secretary of State. Because of questions concerning the necessity of statutory provisions throughout the code concerning rulemaking procedures of administrative agencies and rights of appeal from agency decisions, the Council recommends a concurrent resolution to study statutes outside of the Administrative Agencies Practice Act to determine their necessity due to the substantive nature of that Act.

AGRICULTURE COMMITTEE

The Council studied beginning farmer programs and mandatory education for beginning farmer program applicants. The Council recommends a bill to establish a beginning farmer eligibility advisory board, mandate education for program applicants, revise the revolving loan fund, and allow personal property loan guarantees.

The Council studied state soil conservation laws and the proposed model state soil conservation law. The Council recommends that the model state soil conservation law not be enacted. The Council recommends a bill to lower the vote requirement for approval of land use ordinances by soil conservation districts.

The Council studied livestock auction market and dealer licensing and bonding. The Council recommends a bill to raise the minimum bond requirements for livestock dealers; a bill to increase the authority of the agencies regulating the livestock industry; a bill to transfer authority over the licensing and bonding of livestock auction markets from the Livestock Sanitary Board to the Commissioner of Agriculture; a bill to require livestock auction markets and dealers to file records releases; and a bill to provide that any seller of livestock retains title until a check given in exchange for the livestock has cleared.

BUDGET SECTION

The Council approved the report from the Office of Management and Budget certifying general fund revenue receipts of $437,878,817.21 whereby the contingent one percent sales tax increase did not become effective because revenues were greater than $400 million. The Council also approved construction of an annex to the Aerospace Science Center at the University of North Dakota, funded by a Federal Aviation Administration grant of $2.75 million, and the nonresident tuition rates set by the State Board of Higher Education.

The Council received a report regarding the number of persons performing public information activities and the cost, nature, and frequency of such activities. The Council encouraged state agencies and institutions to curtail the use of contracted public relations services, and to utilize such services only if approved by the Legislative Assembly. The Council also received reports on the status of the general fund, oil and gas production and oil extraction tax revenues, the Tax Commissioner's enhanced audit program, and 1983-85 salary and wage appropriations.

Tour groups visited major state institutions and agencies, evaluated requests for major improvements and structures, and heard problems encountered by the institutions.

BUDGET "A" COMMITTEE

The Council studied the funding of postsecondary education. The Council adopts 23 recommendations relating to future funding of postsecondary education, including the development of priorities and changes in the methods of funding faculty, equipment, facility maintenance, research, and computers. The Council recommends a bill to allow the Office of Management and Budget to lease or acquire equipment for state agencies and institutions by issuing and selling variable rate demand notes.

The Council studied the feasibility and efficiency of placing all state laboratories in a central laboratory facility. The Council recommends that any

additional laboratory facility in Bismarck be constructed near the current State Laboratories Department to allow for collocation of the laboratory of the State Department of Health, the State Laboratories Department, and the laboratory of the State Water Commission.

The Council studied the uses of existing state facilities but makes no recommendation to change the current procedure for financing statewide capital construction projects or to provide for alternate uses of existing facilities.

BUDGET "B" COMMITTEE

The Council studied the investment powers of the State Investment Board and the Public Employees Retirement System to determine whether the best return is being received on the state's investments and to investigate possible investment alternatives available within the state. The Council recommends a bill to add as members of the State Investment Board the executive secretary of the Teachers' Fund for Retirement and two members from the private sector experienced in the field of investments. The Council recommends a bill to require the funds under the control of the State Investment Board and the Public Employees Retirement System to establish policies on investment goals and objectives and to prepare uniform annual investment performance reports. The Council recommends a bill to allow the State Investment Board to invest in stocks, and a bill to provide a "prudent person" standard for investments of the Teachers' Fund for Retirement.

The Council studied the investment, lending, and bonding programs of various state agencies to determine the possibility of designing state investment and lending programs to provide financial assistance to North Dakota private businesses. The Council recommends a bill to require the State Auditor's office to prepare annually a report identifying all outstanding evidences of indebtedness of the state. The Council recommends a bill to repeal laws relating to the obsolete bonding programs. The Council supports the creation of venture capital corporations to provide venture capital to developing business in the state.

The Council recommends a concurrent resolution to continue the study of the investment powers and performance of the State Investment Board and funds of the Public Employees Retirement System as a way to monitor the implementation of present recommendations and to determine whether further improvements are possible.

BUDGET "C" COMMITTEE

The Council studied the state's reimbursement of Medicaid patient-related care in nursing care facilities. The Council recommends a bill to allow additional reimbursement for certain costs to nursing care facilities with no differential between private and Medicaid patient rates. The Council recommends a bill to limit rental reimbursement when a facility is sold and leased back to the original owner, and a bill to provide for the recapture of depreciation expense previously paid a provider when a facility is sold at a gain. The Council recommends a concurrent resolution to urge the Department of Human Services to revise its long-term care facility Medicaid reimbursement system, and a concurrent resolution to urge long-term care facilities to develop a long-term care facility code of ethics including guidelines to promote uniformity in the basis for charging for ancillary services and miscellaneous supplies.

The Council studied the financing of resident care at state and community facilities. The Council recommends no changes be made to current law relating to the financing of this care.

The Council monitored the status of major state agency and institution appropriations. The review focused on expenditures of the institutions of higher educaton and the charitable and penal institutions, appropriations for elementary and secondary education, and appropriations to the Department of Human Services for medical and economic assistance.

The Council monitored the placement of residents from the Grafton State School and the status of deinstitutionalization. The Council recommends a bill to allow profit corporations to obtain licenses to operate treatment centers for developmental disabled persons.

CHARITABLE GAMBLING COMMITTEE

The Council studied the operation of games of chance, with emphasis on the level of allowable expenses deducted by charities from adjusted gross proceeds of gaming operations and the uses made of net proceeds from games of chance. The Council recommends a bill to increase the limitation on allowable expenses

deductible by a charity from adjusted gross proceeds of gaming operations, to allow full year computation of the percentage limitation, and to allow the cost of utilities as a deductible expense. The Council recommends a bill to limit monthly rent charged a charitable organization by a host site of a gaming operation to the lesser of 2.5 percent of monthly adjusted gross proceeds or $150 per blackjack table, with no limit on rent charged for bingo operations. The Council recommends a bill to increase the payout limit on sports pools to 90 percent of the amount wagered and a bill to allow local licensing of sports pools. The Council recommends a bill to require a two-month waiting period before a new sponsoring charity can replace an old one at a host site and a bill to allow suspension or revocation of a liquor license when the holder of a license violates charitable gambling law or the general criminal prohibition of other kinds of gambling.

EDUCATION "A" COMMITTEE

The Council studied elementary and secondary school finance and focused its attention on the foundation aid formula, transportation aid formula, tuition payment formula, school district mill levy authority, and school district financial incentives to improve educational programs. The Council recommends a bill to increase per-pupil foundation aid payments to $1,525 for the 1985-86 school year and $1,595 for the 1986-87 school year. The Council recommends a bill to permit school districts which have taxable valuation that has increased 20 percent or more over a one-year period and which would as a result of the 20-mill equalization deduct receive less in state foundation aid payments to levy for two years without a vote any number of mills necessary to offset the foundation aid payments which would otherwise be lost. The Council recommends a bill to eliminate the current transportation payment formula and replace it with a block grant payment to reimburse school districts for 85 percent of their transportation costs. The Council recommends a bill to establish a partnerships in educational excellence program to provide state payments to participating school districts for planning and implementing local educational excellence programs.

The Council also studied the future provision of special education programs. The Council recommends a bill to require the Department of Human Services to reimburse school districts for 70 percent of the costs of room and board paid on behalf of handicapped children placed in facilities outside their school districts of residence for special education services not available within their school districts of residence. The Council recommends a bill to make the state financially responsible for the costs of a child who has been ordered by a court or social service agency to stay for any prescribed period of time at a state special education facility, foster home, or a home maintained by any nonprofit corporation. The bill also clarifies which school district is the legal residence for children who are placed voluntarily in facilities outside their school districts of residence for special education services. The Council recommends as part of its recommended foundation aid bill that school districts be reimbursed in an amount equal to 60 percent of the salary and fringe benefits costs paid the previous year for personnel employed to deliver special education instructional services. The Council recommends a bill to establish a special education area coordinator pilot program. The Council recommends a concurrent resolution urging the United States Department of Education to approve the joint application submitted by the North Dakota State University-Bottineau and the Bottineau Peace Garden Special Education Cooperative for federal funds to implement a program designed to train educable handicapped persons with marketable job skills in postsecondary educational institutions.

EDUCATION "B" COMMITTEE

The Council studied state laws regarding the reorganization, annexation, and dissolution of school districts; the position of county superintendent of schools; minimum high school curriculum and length of the school term; the effects on students of nonacademic extracurricular activities and absenteeism; and the duties and responsibilities of elementary and secondary schoolteachers. The Council recommends a bill to repeal current school district reorganization, annexation, and dissolution laws and to establish one new chapter to the North Dakota Century Code addressing general provisions applicable to all three procedures for altering school district boundaries and three new separate chapters to deal specifically with each of those procedures. The Council recommends a bill to implement an area service agency pilot program to provide educational and administrative services to school districts. The bill also requires a plan be

established for the eventual transfer of all county superintendents of schools' duties to area service agencies by January 1, 1989. The Council recommends a bill to increase the minimum school term by five days with a local school board option of using three of those extra days for inservice education training. The Council recommended the Superintendent of Public Instruction introduce a bill in the 49th Legislative Assembly to delete or amend outdated statutes concerning teachers' responsibilities.

The Council studied the feasibility and desirability of using facilities of public television to make specialized instruction programs available in elementary and secondary schools. The Superintendent of Public Instruction has included in his executive budget a request for funds to purchase instructional television programming. The committee makes no recommendation with respect to the funding of instructional television.

ELECTIONS COMMITTEE

The Council studied voting systems in use in the state and general election law requirements. The Council recommends a bill to provide that the delivery of the elections supplies and the training sessions for election workers may not be more than 15 days before an election; a bill to provide for general requirements for the appointment, duties, and compensation of election officials; a bill to provide that the ballot card for electronic voting systems must contain the names of all candidates; a bill to provide that the ballot card for electronic voting systems purchased after June 30, 1985, must contain the names of all candidates; a bill to provide for an alternative composition of the county canvassing board when the only item on the ballot is either a bond issue question or the election of a judge, or both; a bill to provide that the county canvassing board, in lieu of the election board, may canvass the votes for those precincts using electronic voting systems or electronic counting machines; a bill to provide that a rectangle must be printed on all ballots, ballot cards, and ballot envelopes in which the stamp and initial should be placed; a bill to provide for the appointment of election inspectors for four years; a bill to remove the requirement that a county elect a public administrator and authorize a county judge to appoint someone to that office; and a bill to repeal the present provisions relating to electioneering and ban electioneering within 300 feet of a polling place on election day.

The Council studied statutes relating to the petition of governmental bodies with emphasis on petition requirements, verification requirements, and the feasibility and desirability of achieving uniformity. The Council recommends a bill to define the term "qualified elector" for petition purposes and insert the term throughout the Century Code in lieu of such words as elector, people, legal voters, voters, bona fide electors, electorate, persons, eligible voters, signers, and citizens. The Council recommends a bill to set forth the form for referendum and initiative petitions, and a bill to allow a sponsoring committee for referred or initiated measures to use separate notarized signature forms when seeking approval of the petition.

ENERGY DEVELOPMENT COMMITTEE

The Council studied the coal conversion facilities privilege tax and the allocation of the proceeds from the tax. The Council makes no recommendation for change in the allocation formula but recommends a bill to exempt the byproducts of the coal gasification process from the tax.

The Council studied the operation of the coal impact aid program. The Council makes no recommendation for legislative change in the coal impact aid program.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council received several briefings on the progress of litigation surrounding the Garrison Diversion Project, the status of construction activity, the mitigation issue, discussions with Canadian officials, and on relationships with downstream states. The Council also provided support for the Garrison Diversion Project at a meeting of the federal Garrison Diversion Unit Commission. The Council approved a resolution that requests the Legislative Assembly to take necessary action to bring about a condition and atmosphere of upstream and downstream reciprocity in United States-Canadian drainage. The Council approved a resolution that requests the North Dakota Congressional Delegation to work with the congressional delegations from downstream Pick Sloan — Missouri Basin program states to assist the North Dakota Legislative Council to do research to establish the amount of annual benefits that accrue to downstream Missouri River

states by the inundated acres in upstream states and to rekindle downstream interests in supporting benefits that would reduce the sacrifices being made by upstream states.

GOVERNMENT REORGANIZATION COMMITTEE

The Council studied methods of providing more efficient and prompt collection of taxes by the state. The Council concludes that North Dakota's present tax collection system does not result in excessive delay in receipt by the state of tax revenues, and that there would not be sufficient benefits to the state for revision of the current remittance system.

The Council studied the feasibility of combining certain labor and employment services, and studied the feasibility of combining the Department of Labor, Job Service North Dakota, and the Workmen's Compensation Bureau. The Council concludes that most of the areas of duplication between the Department of Labor, Job Service North Dakota, and the Workmen's Compensation Bureau could be eliminated administratively and that a consolidation of the three agencies is not necessary at this time. The Council recommends a resolution directing the three agencies to coordinate their efforts in providing labor and employment services, with special emphasis given to combining reporting forms, payroll auditing functions, administrative and data processing services, and to sharing office space. The Council also recommends a bill to allow the sharing of payroll information data between the Commissioner of Labor and the Workmen's Compensation Bureau.

The Council studied the financial management and administrative services of state government. The Council recommends a bill to replace the State Auditor with the State Treasurer on the Board of University and School Lands; remove the State Auditor as an advisory member of the Public Employees Retirement Board; and replace the Tax Commissioner with the Secretary of State on the State Board of Equalization. The Council recommends a concurrent resolution for a constitutional amendment to replace the State Auditor with the State Treasurer as a member of the Board of University and School Lands. Also in the area of financial management and administrative services, the Council recommends a bill to transfer administrative control of the Grafton State School and San Haven from the Director of Institutions to the Department of Human Services, effective July 1, 1989.

INDUSTRY, BUSINESS AND LABOR COMMITTEE

The Council studied fees imposed on insurance companies, and the potential methods of health care cost containment. The Council recommends a bill to provide for fiscal year, instead of calendar year, reporting by health maintenance organizations to the Commissioner of Insurance. The Council recommends a bill to add four consumer members to the Health Council to represent business, labor, agriculture, and the elderly. The Council recommends a bill to delete the present reference in certificate of need law to federal law concerning indexing, set fixed thresholds, clarify the scope of coverage relating to equipment used to provide services to patients of health care facilities, and remove the exemption for physicians and dentists for otherwise reviewable transactions. The Council recommends a bill to provide for hospice program licensure by the Department of Health. The Council recommends a bill to provide for the admissibility at trial of evidence relating to payments received from collateral sources, and the discretionary deduction of such payments by the trier of fact from damages awarded to successful medical malpractice plaintiffs. The Council recommends a bill clarifying and expanding present law concerning the provision of voluntary services or partial payment of a claim without admission of guilt in medical malpractice suits. The Council also recommends a bill to provide that medical malpractice plaintiffs may use evidentiary discovery procedures against individuals who are not defendants, by designating them as respondents in discovery. The Council makes no recommendation to amend the insurance premium tax law. The Council recommends a bill to increase all fees collected by the Commissioner of Insurance from insurance companies to a minimum of $10 and to establish an insurance company appointment-of-agent fee of $10.

The Council investigated the state self-insurance health benefits program. The committee studied the present self-funded plan, and the feasibility of expanding that plan to include self-administration by the state. The Council makes no recommendation for legislation concerning changes in the state health insurance program.

The Council studied the impacts and problems associated with business closings in the state. The Council makes no recommendation for legislation concerning this area.

The Council also reviewed North Dakota's bid preference laws for public contracts. The Council makes no recommendation for legislation in this area.

INSURANCE CODE REVISION COMMITTEE

The Council continued the study begun during the 1981-82 interim by studying the insurance laws remaining in Title 26 for the purpose of completing the comprehensive revision, with emphasis on technical and grammatical changes. The Council recommends a bill to replace these statutory provisions, relating to insurance agents and sales, contracts of insurance, and insurance coverage. The Council also recommends a bill to make changes throughout the North Dakota Century Code, which are required upon enactment of the revised provisions.

JUDICIARY "A" COMMITTEE

The Council studied the ownership or leasing of farm or ranch land by nonprofit corporations or trusts, with emphasis on the beneficial aspects of such ownership or leasing. The Council recommends a bill to allow certain nonprofit charities to own farm or ranch land only as long as the land is essential to the charitable mission. The bill also allows industrial and business concerns to own farm or ranch land if that land is necessary for the business purpose, but land not actually used for the business must be rented to farmers. The Council recommends a bill to prohibit a corporation from being a partner in a partnership farm unless the corporation is a qualified family farm corporation under the corporate farming law.

The Council studied the abandonment of railroad branch lines and the possibility of forfeiture of mineral interests on land grant holdings in the event of abandonment. The Council recommends a bill to require the Public Service Commission to intervene in the federal process for approving abandonment of a railroad on request of any shipper or political subdivision affected by the proposed abandonment, and to grant intrastate railroads eminent domain powers to condemn branch lines that are being abandoned.

The Council studied the feasibility and desirability of establishing a fund for loans to farmers funded privately by earnings from mineral royalties, with emphasis on income tax incentives on the state and federal level. Although the Council recognizes the desirability of such a fund, no recommendation is made because of the serious doubts as to the fund's feasibility.

JUDICIARY "B" COMMITTEE

The Council studied the secured transaction laws as they relate to sales and purchases by merchants and buyers of secured farm products. The Council makes no recommendation for legislative action.

The Council studied the penalty provisions of the game and fish laws of the state. The Council recommends a bill to make a number of the less serious offenses in the game and fish laws noncriminal offenses. The Council also recommends a bill to allow a judge to suspend a defendant's license for criminal and noncriminal convictions under the game and fish laws.

The Council studied state laws governing the possession, sale, and use of pistols, machine guns, bombs, explosives, and other weapons. The Council recommends a bill to repeal the weapons title of the North Dakota Century Code and enact a new weapons title.

The Council makes several recommendations as a result of its constitutional and statutory revision responsibilities. The Council recommends a concurrent resolution to amend the Constitution of North Dakota to create a new executive branch article. The Council recommends a concurrent resolution to study the state's bad check laws. The Council recommends a bill to provide for a procedure for the levy of execution; a bill to provide a procedure for the foreclosure of statutory liens on personal property and enforcement of a pledge by sale; a bill to provide a new procedure for foreclosure on any lien on personal property; a bill to remove the requirement that a notary public be a citizen of the United States; a bill to provide that vacancies in the office of district or county judge or Supreme Court justice must be filled according to the requirements of the laws concerning the respective judicial nominating committee; a bill to remove the provisions in the bad check laws which provide that the payment of a check within 10 days of the defendant's receiving a notice of dishonor is a defense; a bill to repeal the law

which limits the amount a charitable organization may incur for solicitation and fundraising expenses; a bill to make it a crime for a charitable organization, professional fundraiser, or professional solicitor, or an agent thereof, to use fraud to solicit a contribution for a charitable organization; a bill to provide that a headnote may not be used to determine legislative intent or the legislative history for any statute; a bill to provide for the use of legislative intent to resolve conflicts between different bills passed during a legislative session; a bill to identify those who may assist a disabled voter; and a bill to make technical corrections to the laws.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council reviewed 61 audit reports presented by the State Auditor's office.

The Council studied the feasibility of appropriating to the agricultural commodity promotion agencies all or a portion of the interest earned on the commodity assessments collected by those agencies. The Council recommends a bill to provide for agricultural commodity groups to retain 80 percent of the interest earned on their commodity assessment funds, with the remaining 20 percent to pay for services provided to the commodity groups by the state.

The Council studied all state veterans' benefit programs to determine the feasibility and impact of extending those benefits to all honorably discharged military personnel. The Council recommends a bill to extend eligibility for certain veterans' benefit programs such as the Soldiers' Home and veterans' aid fund to peacetime veterans as well as to wartime veterans, and to change the name of the North Dakota Soldiers' Home to the North Dakota Veterans' Home.

The Council studied the functions and purposes of revolving funds, including funds such as the community water facility loan fund, the public utility valuation revolving fund, and the veterans' aid fund. The Council recommends a list of general criteria to be used as guidelines for the Legislative Assembly to follow in its handling of revolving funds.

The Council reviewed a report by the State Auditor regarding federal legislation requiring agencies receiving federal funds to be audited annually, but permitting states to conduct the audits less frequently if this is the current practice. The Council encourages the 49th Legislative Assembly to approve legislation, to be introduced at the request of the State Auditor, that would require biennial audits of agencies receiving federal funds.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Council supervised the continuing renovation of the legislative wing of the State Capitol and recommends a bill to appropriate funds to refinish woodwork and make other improvements during the 1985-87 biennium.

The Council reviewed legislative rules and makes a number of recommendations intended to clarify existing rules and expedite the legislative process.

The Council supports efforts to disseminate legislative documents, including the providing of bill status information at cost to interested parties, sending journals and other documents to public libraries throughout the state, and doubling the number of incoming WATS lines for constituents during legislative sessions.

NATURAL GAS PIPELINES COMMITTEE

The Council studied the taxation of natural gas pipelines. Because of pending court decisions on pipeline taxation, the Council makes no recommendation regarding taxation of pipeline property.

The Council studied the feasibility of construction of a natural gas pipeline from western North Dakota oil fields to eastern North Dakota markets. Because construction of a natural gas pipeline is economically infeasible and the Northern Border Pipeline, which is in place and may be extended into the eastern United States, provides an adequate conduit for North Dakota natural gas if markets can be found, the Council makes no recommendation in this area.

NATURAL RESOURCES COMMITTEE

The Council studied the generation and disposal of low-level radioactive waste in this state. The Council recommends a bill to enter into a Dakota Interstate Low-Level Radioactive Waste Compact with South Dakota and, as an alternative, a bill to enter into the Rocky Mountain Interstate Compact on Low-Level Radioactive Waste. The committee studied toxic or hazardous substances in the

state, including worker right-to-know legislation and the state hazardous waste management program, but makes no recommendation for legislative action.

The committee studied waterfowl production areas and refuges in the state, including an examination of waterfowl production area easement acreage delineation by the federal government, payments in lieu of taxes to counties in the state under the Wildlife Refuge Revenue Sharing Act, federal constitutional requirement for state consent for federal land acquisition, and various technical amendments. The Council recommends a concurrent resolution urging the Congress of the United States to appropriate money sufficient to pay 100 percent of the payments in lieu of taxes under the Wildlife Refuge Revenue Sharing Act. The Council recommends a bill to make technical amendments to some of the laws relating to this state's consent to wildlife area land acquisitions by the federal government.

POLITICAL SUBDIVISIONS "A" COMMITTEE

The Council studied the funding of regional airports, with emphasis on the funding levels for political subdivisions in light of benefits to taxpayers and on access to alternative funding. The Council recommends a bill to establish eight air carrier service regions based on the property tax base necessary to provide funding needs for the airports serving the eight largest cities in the state. As an alternative, the Council recommends a bill to establish eight air carrier service regions based on the planning regions used by the executive branch of government, and to provide for a statewide referendum or a regional referendum with respect to the establishment of each region. The Council recommends a bill to authorize political subdivisions operating air carrier airports to establish toll access roadways to the air carrier terminal buildings. The Council recommends a bill to allow counties to impose a mill levy to support an airport or airport authority even where another subdivision already has an airport levy. The Council recommends three concurrent resolutions expressing support for the establishment of regional airport authorities serving cities along borders with adjoining states.

The Council studied mobile homes and mobile home ownership, particularly with respect to laws and rules affecting mobile home taxation and mobile home parks. The Council recommends a bill to establish standards for the landlord-tenant relationship in mobile home parks. The Council recommends a bill to provide for payment of property taxes on mobile homes after the property tax year rather than before it.

The Council studied land use planning and zoning law, with consideration of possible consolidation and redrafting of the laws and the effect of the laws on all types of residential housing. The Council recommends a bill to revise the law relating to land use and planning regulatory authority of counties, cities, and townships. The bill provides for initiative and referendum of zoning matters, establishment of uniform notice requirements for publication of planning and zoning matters, and for uniform two-thirds majority vote requirements to override decisions of planning and zoning commissions.

POLITICAL SUBDIVISIONS "B" COMMITTEE

The Council studied the powers and rights to be granted to political subdivisions under Article VII of the Constitution of North Dakota as approved by the voters in 1982. The Council recommends a bill for county home rule which is patterned after state law providing for city home rule.

RETIREMENT COMMITTEE

The Council studied the feasibility and desirability of recodifying the statutes affecting teacher retirement programs. The Council makes no recommendation for legislative action.

The Council studied the Highway Patrolmen's retirement system. The Council recommends a bill to eliminate the maximum salary limitations in the Highway Patrolmen's retirement system used for calculating contribution and benefit levels and to correct the underfunding situation in that retirement program. The bill increases the state's contribution level by 5.7 percent of compensation and increases the patrolmen's contribution level by 3.3. percent of compensation. The Council also recommends an alternative bill to increase the state contribution to the Highway Patrolmen's retirement system by seven percent to correct the underfunding situation in that retirement program.

The Council conducted a survey of statutorily authorized public employee

retirement programs that are outside the scope of the state retirement programs. The Council makes no recommendation for legislative action as a result of information gained from the survey.

The Council solicited and reviewed various proposals affecting public employee retirement programs. The Council obtained actuarial and fiscal information on each of these proposals and reported this information to each proponent. The Council gave favorable recommendations to 14 of the retirement proposals. The Council recommends a bill to allow the board of trustees of an alternate firemen's relief association the authority to reduce benefits in accordance with actuarial recommendations to ensure solvency of its fund.

The Council recommends a resolution to study the feasibility and desirability of consolidating public employee retirement plans into a single state retirement system; a resolution to study the imposition of mandatory actuarial valuation and reporting standards for public employee retirement systems; a resolution to study firemen's retirement under the alternate firemen's relief association law; a resolution to study the actuarial soundness of political subdivision retirement programs for public employees; a resolution to study the expansion of the jurisdiction of the Committee on Public Employees Retirement Programs to include all legislation affecting public employee fringe benefit programs; and a resolution to study the establishment of a prefunded retirement health care insurance plan for public employees under the state's uniform group insurance plan.

TENNECO PLANT COMMITTEE

The Council studied possible methods of mitigating the potential impact of the proposed Tenneco coal gasification plant on the city of Beach, North Dakota, and the surrounding area. The Council recommends a bill to enter into an interstate compact with Montana. The compact requires both states to contribute moneys to mitigate the impacts of the proposed development of a large-scale coal gasification plant and mining facilities along the North Dakota-Montana border. The committee also recommends a bill to allow the Board of University and School Lands to provide loans to coal-impacted areas in this state in advance of actual coal mining.

WATER COMMITTEE

The Council studied water resource development finance in this state. The Council recommends a concurrent resolution designating the construction and completion of the federally authorized and funded Garrison Diversion Unit as having the first and highest priority for water development in North Dakota. The Council recommends a bill to increase from 10 to 15 percent the amount of the oil extraction tax allocated to the Southwest Pipeline Project bond sinking fund and the resources trust fund and to expand the projects that can be funded from the resources trust fund from "comprehensive water supply facilities" to "water-related projects" that may be engaged in by the State Water Commission. The Council recommends a bill to establish a procedure for political subdivisions and rural water systems to follow in seeking financial assistance from the resources trust fund for the development of water-related projects. The Council recommends a bill to transfer from the general fund to the resources trust fund an amount equal to the $11.7 million transferred from the resources trust fund by the 1983 Legislative Assembly and appropriated for the Grafton State School. The Council also recommends that the Water Commission utilize the services of the Bank of North Dakota in an advisory capacity when developing financing packages and structures for water projects.

The Council studied joint water resource boards and the selection of water managers for water resource districts. The Council recommends a bill to reduce the term of office for water resource district managers from five years to three years. The Council recommends a bill to allow joint water resource district mill levy to be applied only upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. The Council also recommends that water resource district managers continue to be appointed by the boards of county commissioners rather than be elected.

REPORT

of the

NORTH DAKOTA LEGISLATIVE COUNCIL

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

FORTY-NINTH LEGISLATIVE ASSEMBLY
1985

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North Dakota Legislative Council

STATE CAPITOL — BISMARCK 58505-0183 TELEPHONE (701) 224-2916

January 8, 1985

Honorable George A. Sinner
Governor of North Dakota

Members, 49th Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations to the 49th Legislative Assembly.

Major recommendations include: improvements to beginning farmer loan programs; consolidation of livestock auction market licensing; improvements in school aid and encouragement of regional delivery of special education services and administrative and other education services; a lengthening of the school term; revision of the Medicaid reimbursement formula for long-term care facilities; revision of the certificate of need law and procedures for medical malpractice suits; development of investment goals and objectives by the State Investment Board; modification of the membership of the Board of University and School Lands and the Board of Equalization; transfer of administrative control of the Grafton State School and San Haven; expanded eligibility for veterans' benefit programs; requirements for referendum and initiative petitions; allocation of additional moneys to the resources trust fund for water development; interstate compacts on disposal of low-level radioactive waste; completion of the revision of the insurance laws; revision of the weapons laws; and procedures for implementation of county home rule.

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

Respectfully submitted,

Representative Roy Hausauer
Chairman
North Dakota Legislative Council

RH/nb
Enc.

HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

I. HISTORY OF THE LEGISLATIVE COUNCIL

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

After the hiring of a research director, the first LRC held monthly meetings prior to the 1947 Legislative Session and recommended a number of bills to that session. Even though the legislation creating the LRC permitted the appointment of subcommittees, all of the interim work was performed by the 11 statutory members until the 1953-55 interim, when other legislators participated in studies. Although "research" was its middle name, in its early years the LRC served primarily as a screening agency for proposed legislation submitted by state departments and organizations. This screening role is evidenced by the fact that as early as 1949, the LRC presented 100 proposals prepared or sponsored by the committee, which the biennial report indicated were not all necessarily endorsed by the committee and included were several alternative or conflicting proposals.

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

II. THE NEED FOR A LEGISLATIVE SERVICE AGENCY

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

Legislative councils are the result of the growth of modern government and the increasingly complex problems facing legislators. Although one may not agree with the trend of modern government in assuming additional functions, it is, nevertheless, a fact which must be faced, and the need exists to provide legislators with the tools and resources which are essential if they are to fulfill the demands placed upon them.

In contrast to other branches of government, the Legislative Assembly in the past had to approach its deliberations without its own information sources, studies, or investigations. Some of the information relied upon was inadequate or slanted because of special interests of the sources.

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

III. COMPOSITION OF THE COUNCIL

The Legislative Council by statute presently consists of 15 legislators, including the majority and minority leaders of both houses and the Speaker of the House. The speaker appoints five other representatives, two from the majority and three from the minority from a list of nine members recommended by each party. The Lieutenant Governor, as President of the Senate, appoints three senators from the majority and two from the minority from a list of seven members recommended by each party.

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

IV. FUNCTIONS AND METHODS OF OPERATION OF THE COUNCIL

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

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

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

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

In addition to conducting studies, the Council and its staff provide a wide range of services to legislators, other state agencies, and the public. Attorneys on the staff provide legal advice and counsel on legislative matters to legislators and legislative committees. The Council supervises the publication of the Session Laws, the North Dakota Century Code, and the North Dakota Administrative Code. The Council has on its staff the Legislative Budget Analyst and Auditor and assistants who provide technical assistance to Council committees and legislators and who review audit reports for the Legislative Audit and Fiscal Review Committee. A data processing division provides computer services to the legislative branch, including research and bill drafting capabilities. The Legislative Council library contains a wide variety of materials and reference documents, many of which are not available from other sources.

V. MAJOR PAST PROJECTS OF THE COUNCIL

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

Government reorganization has also occupied a considerable amount of attention. Included have been studies of human service centers, agriculturally related functions of state government, centralized state government computer and microfilm services, and organization of the state's charitable and penal institutions, as well as studies of the feasibility of consolidating functions in state government to create a Department of Motor Vehicles and a Department of Administration.

The review of uniform and model acts, such as the Uniform Probate Code, have also been included in past Council agendas. Constitutional revision has been studied several interims, as well as studies to implement constitutional measures which have been approved by the voters, such as the new Judicial Article.

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

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

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

ADMINISTRATIVE RULES COMMITTEE

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

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

In addition, the Legislative Council delegated to the committee the Council's authority to review and approve or disapprove state purchasing rules pursuant to NDCC Section 54-44.4-04.

Committee members were Representatives William E. Kretschmar (Chairman), Rosie Black, Les Gullickson, Glenn A. Pomeroy, Scott B. Stofferahn, Steven J. Swiontek, Janet Wentz, and Thomas C. Wold; and Senators Curtis N. Peterson and Jens J. Tennefos.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

Review of Current Rulemaking

Administrative agencies are those state agencies authorized to adopt rules in accordance with the requirements of the Administrative Agencies Practice Act (NDCC Chapter 28-32). By statute, a rule is an agency statement that implements, interprets, or prescribes law or policy. Properly adopted rules have the force and effect of law.

The committee's review authority is statutorily limited to rules assigned to the committee. At the committee's request, the Legislative Council chairman assigned to the committee all rules published in the North Dakota Administrative Code (NDAC) effective after August 31, 1982. This allowed continuation of the rules review process initiated on July 1, 1979.

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

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

The committee reviewed 1,856 rule changes from August 31, 1982, to November 2, 1984. Approximately 282 rule changes resulted from 1983 legislative action, 471 changes resulted from 1981 legislative action, and 28 changes resulted from 1979 legislative action. In some instances a rule change is related to action by two or more legislative sessions. For example, NDAC Chapter 75-04-03, Developmental Disabilities Loan Program, implements NDCC Chapter 6-09.6 (which was enacted in 1981 and amended in 1983). These statistics reflect initial rulemaking activity resulting from legislative action. If a rule was adopted as the result of legislative action, a subsequent amendment of that rule is not considered as "resulting" from the original legislative action.

Approximately 504 rule changes were related to federal programs, statutes, or regulations. In some instances there is a relationship between state legislative action and federal programs or provisions, e.g., outdoor advertising rules are related to 1983 House Bill No. 1431 and the Highway Beautification Act of 1965; driver's licensing rules are related to 1983 Senate Bill No. 2373 (penalties for operating a motor vehicle while under the influence) and to federal requirements in order to receive federal funds; hazardous materials transportation rules and multiple vehicle combinations rules are related to 1983 legislative action and to the Surface Transportation Assistance Act of 1982; and motor carrier rules and intrastate rail rate rules are related to state statutory changes in response to federal statutory and regulatory changes.

The type of state-federal relationship varies. One relationship is by reference to a federal regulation for ease in application, e.g., the fire prevention rules of the State Fire Marshal refer to the standards for explosives as defined by the United States Bureau of Alcohol, Tobacco and Firearms. Another relationship is to provide uniformity between groups subject to state or federal regulation, e.g., bank officer loan rules of the State Banking Board are the same as the limitations found in Regulation "O" of the Federal Reserve Board. A third relationship is for purposes of brevity, e.g., the hazardous materials transportation rules of the Highway Patrol adopt federal regulations by reference, without repeating the substance of the regulations in the Administrative Code. The most prevalent relationship is to obtain approval for state operation of a federal program, e.g., the hazardous waste management rules of the Department of Health are required to meet the federal regulations adopted under the Resource Conservation and Recovery Act of 1976 in order to have state administration of hazardous waste management; the surplus property rules of the Office of Management and Budget must meet the requirements of the federal General Services Administration before the state can dispose of federal surplus property; rail carrier rates rules of the Public Service Commission must have federal approval for the state to have jurisdiction over intrastate rail rates; and the provider reimbursement — long-term care rules of the Department of Human Services are part of the requirements under Title XIX of the Social Security Act (medical assistance) for administering states to have a ratesetting procedure for nursing care. Each relationship is not necessarily independent and may overlap with others, e.g., the hazardous materials transportation rules adopt federal regultions by reference and also make the state eligible for funds from the Department of Transportation.

Table A tabulates the rule changes published in the Administrative Code and reviewed by the committee from August 31, 1982, to November 2, 1984. The tabulation depicts the number of rules amended,

created, superseded (by created rules), and repealed. The most important qualification of the tabulation is that each rule is viewed as one unit, although rules differ in length and complexity. Tables and appendices are treated as separate rules. Except for the organizational rule of the Board of Public Accountancy, changes to organizational rules are not included in the tabulation. The organizational rule of the Board of Public Accountancy contains a substantive provision, which was amended twice by the board. Thirty-two agencies amended their organizational rules during the review period, and one organizational rule was repealed as the result of 1983 legislative action abolishing the Highway Corridor Board. The tabulation does not reflect the 20 rules (excluding the organizational rule) of the Highway Corridor Board and the 56 hazardous materials transportation rules of the Motor Vehicle Department, which were repealed as the result of 1983 legislative actions abolishing the Highway Corridor Board and transferring the rulemaking authority for hazardous materials transportation rules to the Highway Patrol.

The committee's authority is statutorily limited to making rule change recommendations to the adopting agency, to making recommendations to the Legislative Council for amendment or repeal of enabling legislation serving as authority for rules, or to filing formal objections to the rules. The committee reviewed the rules after they became effective and placed importance on proper implementation of legislative purpose and intent.

One concern expressed by committee members was with the Industrial Commission's belated rulemaking with respect to 1983 House Bill No. 1307 (NDCC Section 38-08-06.3), relating to royalty owner statements. The concern was that the 1983 Legislative Assembly passed the bill as an emergency measure with the intent, expressed during committee deliberations, that the Industrial Commission would begin the process to establish the form requirements for royalty owner statements upon passage of the bill, but the commission did not adopt the relevant rules until November 1983, and the royalty owner information statement rule did not take effect until January 1984.

Another concern expressed by committee members was the lack of a hearing by the Board of Medical Examiners before a rule change. A representative of the board reported that the board meets on a limited basis, and although rules are adopted without a hearing, the board will hold a hearing anytime one is requested. NDCC Section 28-32-02 requires an agency to adopt a procedure so that prior to any rule change all interested persons are afforded reasonable opportunity to submit views, with an opportunity for oral hearing if requested.

Under its authority to review and approve state purchasing rules, the committee reviewed and approved nine rule changes.

Review of Complaints Concerning Trailer Court Rules

The committee's review authority also extends to written complaints assigned to the committee. At the committee's request, the Legislative Council chairman assigned to the committee written complaints received concerning trailer court rules of the State Laboratories Department.

North Dakota Century Code Chapter 23-10 governs mobile home parks, trailer parks, and campgrounds. The State Laboratories Department has general supervision over the health, sanitary condition, and legal compliance with the chapter of all mobile home parks, trailer parks, and campgrounds. The current substance of Chapter 23-10 resulted from a study conducted by the Legislative Council's Industry, Business and Labor "A" Committee during the 1975-76 interim. That committee recommended a bill (1977 House Bill No. 1041, compiled as 1977 Session Laws, Chapter 223) that substantially revised Chapter 23-10. The bill changed the direction of Chapter 23-10 from the regulation of motor courts and trailer courts to a three-facility concept of mobile home parks, trailer parks, and campgrounds. The bill established guidelines for plumbing and electrical installations, streets, lighting, fire protection, and playgrounds.

The 1977 bill contained a grandfather clause (codified as NDCC Section 23-10-02) that allows existing facilities eight years to comply with new requirements. The grandfather clause provides that all mobile home parks, trailer parks, and campgrounds constructed before July 1, 1977, have to meet the requirements of Chapter 23-10 by July 1, 1985. In addition, mobile home parks, trailer parks, and campgrounds are required to meet the requirements of rules adopted by the State Laboratories Department after construction of the park or campground within eight years after the effective date of the rules. The grandfather clause was viewed as a compromise allowing existing parks time to comply with sanitation and safety requirements rather than requiring immediate compliance or allowing permanent noncompliance.

The State Laboratories Department adopted NDAC Chapter 47-04-01 effective July 1, 1977. The rules required a minimum lot area based on square footage and a 15-foot setback from streets, a 10-foot setback from court boundaries, and a 15-foot spacing between trailers. Due to the statutory grandfather clause, courts in existence on July 1, 1977, would have had to meet the rules' requirements by July 1, 1985.

In late 1983 the State Laboratories Department held public hearings concerning the application of existing trailer court rules and the adoption of new rules. The hearings generated substantial controversy and mobile home park operators expressed their concerns to members of the committee. The concerns appeared to be over the minimum lot size and setback requirements of the rules.

During this process, the State Laboratories Department adopted new rules that superseded the rules in Chapter 47-04-01. The new rules (Chapters 47-04-01.1 and 47-04-01.2) took effect on August 1, 1984. The new rules distinguish between mobile home parks and trailer parks and campgrounds. With respect to mobile home parks, the new rules limit the occupied area of a mobile home lot to 75 percent of lot area (instead of requiring a minimum square footage lot size) and impose the setback requirements on mobile home parks constructed after August 1, 1984. The mobile home spacing requirement is retained at 15 feet. With respect to trailer parks and campgrounds, the new rules require a 15-foot setback from streets, a 10-foot setback from park or campground boundary lines, and a 10-foot spacing between tents or recreational vehicles.

Testimony from representatives of the State Laboratories Department indicated that new parks will have to comply with the new rules effective August 1, 1984, but existing parks would have eight years to comply,

during which time they would be subject to "guidelines" that are the same as the new rules. The testimony also indicated that all parks in the state comply with the August 1, 1984, requirements, and the rules that would have applied on July 1, 1985, would have required the closing of some trailer courts.

The committee makes no recommendation with respect to the trailer court rules because the complaints appear to have been resolved due to the action by the State Laboratories Department to supersede the rules that would have applied on July 1, 1985. However, concern was expressed by committee members over the possibility of the department continuing to supersede rules within the eight-year period prior to the application of a rule to existing facilities, thus destroying the intent of the grandfather clause.

Administrative Code Distribution

Although the Legislative Council publishes the Administrative Code, the Secretary of State distributes the Administrative Code to subscribers and to public entities designated by NDCC Section 28-32-03.2. Under that section, the Legislative Council receives two copies of the Administrative Code — one is used by the person responsible for codifying administrative agency rules and one is used in the library.

The Administrative Code was published as a 300-set edition in 1978. Supplementation is normally on a monthly basis and 71 supplements have been published from August 1, 1978, through December 1, 1984. Approximately 100 sets, with 71 supplements for each set, are stored by the Secretary of State. New subscribers to the Administrative Code receive the original code and the supplements and must insert the supplements into the code.

A 25-set revised edition of the Administrative Code was published in September 1984 to replace the 100-set (and 7,100 supplements) reserve. However, with two editions of the Administrative Code, the publication of each rule change must be compatible with each edition. The Legislative Council maintains a "proof" set of the Administrative Code, which is an oversized version of the revised edition. A set of the original edition is necessary to allow review of the supplementation requirements of both editions. By informal agreement, the Secretary of State has made a set available for this purpose.

The Administrative Code is also used by committee members during interim committee meetings. The Administrative Code available for use during interim committee meetings is a former legislator's, and current supplementation is by informal agreement with the Secretary of State.

Rulemaking Authority and Appeals

As enacted in 1941, Chapter 28-32 only applied to an "administrative agency" where the agency had statewide jurisdiction; the agency had authority to make a determination; the determination had the effect of law; and the determination by statute was subject to review in the courts of this state.

In a 1952 decision, the North Dakota Supreme Court held that the purpose of Chapter 28-32 is not to grant a right of appeal but merely to regulate the procedure in cases where a right of review was granted expressly by other statutes. Under this interpretation, the language in Section 28-32-15 which provides that any party to a proceeding "may appeal" from the decision of the administrative agency in accordance with the requirements of the section provided merely the procedure for an appeal and not a right of appeal.

In 1981 the Legislative Assembly amended the definition of administrative agency. The legislation eliminated the pre-1981 requirements and provided that every administrative unit of the executive branch of state government is an "administrative agency" except for specifically listed agencies. This was in response to a recommendation by the 1979-80 Administrative Rules Committee to provide a clear definition of administrative agency and a right of appeal from administrative agency decisionmaking.

In a 1983 decision, the North Dakota Supreme Court concluded that as a result of the redefinition of administrative agency by the 1981 Legislative Assembly, Section 28-32-15 authorizes an appeal from final orders or decisions of administrative agencies without the requirement that there be an express statutory grant of a right of review under a statute outside of Chapter 28-32.

As a result of the court's decision, statutes outside of Chapter 28-32 which grant rights of appeal are unnecessary and may cause confusion due to the right of appeal under Chapter 28-32. In addition, the court's reasoning could be extended to rulemaking authority of agencies and statutes outside of Chapter 28-32 which authorize rulemaking also may be unnecessary or cause confusion.

Recommendations

The committee recommends House Bill No. 1042 to provide for the distribution of four copies of the Administrative Code to the Legislative Council. This would eliminate the need for the informal agreements under which four sets are now received by the Legislative Council.

The committee recommends House Concurrent Resolution No. 3001 to direct a Legislative Council study of the statutes governing the rulemaking procedures and grants of rights of appeal from decisions of administrative agencies. The recommended study is intended to ascertain and eliminate unnecessary provisions concerning administrative procedures in light of the substantive nature of Chapter 28-32.

TABLE A
STATISTICAL SUMMARY OF RULEMAKING

Department	Amended	Created	Superseded	Repealed
Accountancy Board	11	5	0	1
Agriculture Commissioner	0	9	0	17
Architecture Board	2	0	0	3
Attorney General	32	68	0	1
Audiology and Speech-Language Pathology Board	6	2	1	3
Banking Department	17	19	0	16
Chiropractic Examiners Board	6	1	0	0
Electrical Board	16	0	0	0
Embalmers Board	7	0	0	0
Engineers and Land Surveyors Board	3	0	0	1
Game and Fish Department	10	22	0	11
Health Department	57	266	0	0
Highway Department	2	36	0	0
Highway Patrol	0	7	0	0
Human Services Department	57	63	9	4
Industrial Commission	78	52	0	23
Insurance Commissioner	10	57	12	0
Laboratories Commission	1	12	4	0
Livestock Sanitary Board	17	0	0	0
Management and Budget Office	9	19	0	0
Medical Examiners Board	0	1	0	0
Milk Stabilization Board	0	1	0	0
Motor Vehicle Department	17	0	0	8
Nursing Home Administrators Board	1	0	0	0
Pharmacy Board	6	19	0	0
Plumbing Board	15	0	0	0
Podiatry Board	0	27	0	0
Public Instruction Superintendent	2	0	0	0
Public Service Commission	110	39	0	17
Retirement Board	10	3	0	2
Tax Commissioner	47	141	254	22
Water Commission	18	5	0	2
Water Well Contractors Board	0	4	0	0
Total	567	878	280	131

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies. House Concurrent Resolution No. 3021 directed a study of the state beginning farmer programs and the feasibility of requiring beginning farmer program applicants to participate in the Board of Vocational Education's adult farm management program or some other supervised farm recordkeeping system as a criteria to qualify for North Dakota beginning farmer programs. House Concurrent Resolution No. 3022 directed a study of the model state soil conservation law as proposed by the Midwestern Governors Conference and the current state soil conservation laws to determine how the model state soil conservation law might be adopted to meet the soil conservation needs of North Dakota farmers, ranchers, and other citizens. Following the November 1983 meeting of the Legislative Council, the chairman of the Council assigned to the committee a study relating to the adequacy of state and federal licensure and bonding requirements for livestock auction markets and dealers.

Committee members were Representative Walter A. Meyer (Chairman), William E. Gorder, Les Gullickson, Eugene Nicholas, Robert E. Nowatzki, Kenneth Olafson, Don Shide, Kelly Shockman, Wilbur Vander Vorst, and Adella J. Williams; and Senators Bruce Bakewell, E. Gene Hilken, and F. Kent Vosper. Representative Walter A. Meyer was appointed chairman following the death of Senator Francis Barth in April 1984.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

BEGINNING FARMER PROGRAMS STUDY

House Concurrent Resolution No. 3021 reflects the Legislative Assembly's concern regarding the amount of state funds invested in beginning farmer programs and the desire to aid beginning farmers by other than financial means.

Current State Beginning Farmer Programs

Beginning farmer programs providing direct loans, tax incentives, and loan guarantees have been enacted by the North Dakota Legislative Assembly. For these programs, a beginning farmer is defined by North Dakota Century Code (NDCC) Sections 57-38-01.2(1)(m) and 57-38-67 (2) as a person who:

1. Is a resident of the state.
2. Receives more than half his gross annual income from farming.
3. Intends to use the farmland he purchases or rents for agricultural purposes.
4. Has had adequate training, by experience or education, in farming operations.
5. Has, including his dependents and spouse, if any, a net worth of less than $100,000.

A revolving loan fund for beginning farmers was established by 1983 Senate Bill No. 2220 as codified in NDCC Section 6-09-15.5. The $5 million fund was established in, and is administered by, the Bank of North Dakota for the purpose of making agricultural real estate loans to beginning farmers. The program limits the participation of the Bank of North Dakota to not more than 35 percent of the appraised value of the real estate. Another financial institution, usually the Federal Land Bank, is required to provide the remaining balance of the loan. The term of a loan may not exceed 40 years and the rate of interest is established by the Bank of North Dakota.

Since 1979 three tax incentives have been enacted to encourage the sale or lease of agricultural land to beginning farmers. State taxable income for an individual, trust, or estate is reduced under NDCC Section 57-38-01.2(1)(m) by the amount of interest received during a taxable year on the sale of at least 80 acres to a beginning farmer by a contract for deed extending for at least 10 years. Under NDCC Section 57-38-68 a landowner who sells at least 20 acres of land to a beginning farmer can deduct all the income realized from the sale, after capital gains treatment, from his North Dakota taxable income in the year the sale occurred. Under NDCC Section 57-38-69 a landowner who leases at least 20 acres of land to a beginning farmer for three or more years can exclude all the rental income up to $25,000 for each year of the lease from his North Dakota taxable income.

The beginning farmer loan guarantee program is codified in NDCC Chapter 6-09.8. Under this program, lenders or people selling real estate may apply for loan guarantees providing 90 percent coverage of loans. The term of the loan guarantee cannot exceed five years, with the maximum amount of the guarantee and the maximum interest rates allowed to be set by the Bank of North Dakota. Guarantees may be given only on loans secured by real estate. Two million dollars were appropriated to the program in 1983.

In addition to programs aimed solely at beginning farmers, several other programs benefit beginning farmers.

The North Dakota Agricultural Development Act, NDCC Chapter 4-36, became effective on July 1, 1981. This Act authorizes the issuance of tax-exempt state industrial revenue bonds (agribonds) to provide farm loans at below market interest rates. The bond revenue is used to establish a fund from which loans made by participating financial institutions in the state are purchased. Loan repayments are then used to pay bondholders.

The tax-exempt nature of agribonds depends upon compliance with federal requirements, which have recently been changed by federal legislation. The program has reportedly been changed to allow only beginning farmers to use funds to purchase real property. Loans may be made available to any farmer for the purchase of new or used equipment, improvements, and brood livestock. The rate of interest under this program will reportedly be 11 percent for the six-year term of loans, with a balloon payment due the end of the term.

The Rural Rehabilitation Corporation, established in 1934 under the Federal Emergency Relief Act, is a nonprofit, private organization that makes loans to beginning farmers who cannot otherwise obtain credit. The Bank of North Dakota has the authority to administer the assets of the corporation under NDCC Section 6-09-33. The corporation cooperates with the Farmers Home Administration by taking first mortgages up to 55 percent of the appraised value of agricultural land. The Farmers Home Administration then takes a second mortgage for the remaining loan amount.

The Bank of North Dakota, pursuant to Industrial Commission authorization, operates a beginning farmer program in cooperation with the Farmers Home Administration. This beginning farmer program is similar to the Bank's regular farm loan program in cooperation with the Farmers Home Administration, under which the Bank provides up to 50 percent of the loan amount at a floating interest rate tied to the Bank's base rate for the previous quarter. However, for beginning farmers the first three annual payments are subsidized at 2.5 percent below the base rate.

Eligibility

Currently, the Bank of North Dakota determines eligibility for revolving fund loans and loan guarantees, while the Tax Commissioner determines eligibility for tax credits. The Bank of North Dakota supported placing the authority to determine eligibility for these beginning farmer programs with the Commissioner of Agriculture. In support of this proposal, the Family Farm Committee, established by the Commissioner of Agriculture to provide input on farm programs, recommended establishing a beginning farmer advisory board to aid the commissioner in determining applicant eligibility.

Revolving Loan Fund

The Bank of North Dakota presently sets the interest rate for loans from the revolving loan fund at four percent below the Federal Land Bank interest rate for the first five years of the loan, after which the rate increases to two percent above the Federal Land Bank rate. These interest rates are set to generate income for the fund and to encourage participants to refinance their loans after five years, thus providing the necessary turnover in the money loaned. Testimony suggested that these interest rates do not allow a beginning farmer to generate sufficient equity in farm property to allow refinancing within five years. The Family Farm Committee, the North Dakota Farm Bureau, and the North Dakota Farmers Union all support lower fixed-interest rates for a longer period of time. Additionally, a 10-year term, with a five-year optional extension, for loans made under the program was supported to further allow participants to establish equity sufficient to allow refinancing.

Most of the original $5 million appropriation to the revolving loan fund has been loaned. Testimony supported a new appropriation of $20 million to this fund.

Loan Guarantees

The Bank of North Dakota reported that there have been few requests for loan guarantees and that none had been made, resulting in the growth of the original $2 million appropriation to more than $2.5 million.

Testimony suggested that the program be expanded to provide guarantees for both personal and real property loans, to allow for better use of the fund. However, the Bank of North Dakota opposed personal property coverage within the loan guarantee program due to the possible volatile nature of the guarantees and due to difficulty in administering personal property guarantees.

Testimony supported allowing personal property loan guarantees only for loans made under the North Dakota Agricultural Development Act (agribond program). These guarantees would reportedly promote the use of personal property agribond loans, because agribond loans are made by private financial institutions which are utimately responsible to the state for the funds loaned. Therefore, these private financial institutions could use the program to guarantee agribond loans. Although the accessibility of agribond loans was questioned because only about one-fourth of the banks in the state participate in the program, the participating financial institutions are reportedly rural, nonchain banks, thus making participating banks sufficiently accessible to the farmers of the state.

Federal Programs

Testimony received regarding the Farmers Home Administration's limited resource loan programs indicated that these programs are not uniformly administered in each county of the state and that shortages of personnel make it difficult to administer properly the programs at local levels.

Mandatory Education

Testimony generally supported the adoption of a mandatory education requirement for loan applicants. Mandatory education would reportedly aid beginning farmers to better manage their farms and ranches, and it would protect the investment of the state in beginning farmer programs through nonpecuniary means. Additionally, mandatory education can supply data and information regarding the success of the beginning farmer programs. Other states, including Minnesota, require beginning farmer program applicants to enroll in educational programs.

Several existing farm management programs are available within the state. The Board of Vocational Education reported that its adult farm management program could be made available throughout a major portion of the state. This program utilizes classroom education, farm visits, and computer analysis to provide ongoing management training to beginning farmers. A representative of the Commissioner of Agriculture also submitted information regarding other educational management programs available within the state.

Testimony and committee discussion reviewed the difficulties associated with mandatory education. The committee found that the existing management programs will have to be enlarged to cover the entire state effectively. Other difficulties include the general reluctance to establish mandatory education programs and the need for cooperation by school districts in the establishment of the Board of Vocational Education's adult farm management programs.

Recommendations

The committee recommends Senate Bill No. 1043 to establish a beginning farmer advisory board under the Commissioner of Agriculture to determine eligibility for beginning farmer programs.

The bill allows participation in loans by the beginning farmer revolving loan fund up to 50 percent of the value of real property. The maximum interest rate charged on loans under the program is four percent per annum for the first 10 years of the loan and six percent thereafter. The maximum term of the loan is 10 years with a five-year optional extension upon the approval of the beginning farmer advisory board.

The bill allows personal property loan guarantees for loans made under the North Dakota Agricultural

Development Act up to 50 percent of the fair market value of the personal property.

The bill requires beginning farmers to participate satisfactorily in the adult farm management program of the State Board of Vocational Education or an equivalent program approved by the Commissioner of Agriculture.

The bill provides appropriations to the Board of Vocational Education and the Commissioner of Agriculture to cover expenses and improvements necessary under the bill and appropriates $20 million to the revolving loan fund.

The committee also recommends House Concurrent Resolution No. 3002 urging congressional review of the Farmers Home Administration's limited resource loan programs and requesting additional Farmers Home Administration personnel.

SOIL CONSERVATION STUDY

House Concurrent Resolution No. 3022 directed a study of the current state soil conservation laws and the model state soil conservation law, as proposed by the Midwestern Governors Conference.

History

Presently, 37 percent of North Dakota's land area is considered inadequately protected against wind and water erosion based upon technical standards developed and used by the soil conservation districts and the United States Department of Agriculture — Soil Conservation Service.

Experts in the field of soil conservation are concerned about the rate of soil erosion in North Dakota. On most cropland an erosion rate of four to five tons per acre is considered the maximum tolerable loss, above which eroded soil will not be replaced through natural processes. However, on rangeland and other thin, fragile soil areas, only two or three tons of soil per acre will be replaced through the natural processes.

Based on the 1977 erosion inventory conducted by the United States Department of Agriculture — Soil Conservation Service, 23 percent of North Dakota's cropland is losing in excess of five tons of soil per acre per year. The concern is, therefore, that an unacceptable rate of erosion of North Dakota cropland is taking place.

Existing State Law

The soil conservation program, NDCC Chapter 4-22, was authorized by the soil conservation districts law of 1937. The 1937 Act established a two-tier system of state and local control of soil erosion.

At the state level, the Soil Conservation Committee was established as the state agency to provide for the conservation of the soil and soil resources. The Soil Conservation Committee advises and assists local districts in developing their long-range conservation plans and annual plans of operation. However, the actual implementation of soil conservation plans in each district is left up to the district supervisors through their regulatory powers.

At the local level, soil conservation districts were established upon petition to the State Soil Conservation Committee and after a referendum among qualified electors living within the district to be organized. The soil conservation districts may conduct research relating to the character of soil erosion, implement preventive and control measures needed, and develop comprehensive plans for the conservation of soil resources within the districts. The district supervisors have the specific authority to formulate land use ordinances, which must be approved by three-fourths of the district's voters, to assist conservation of soil and water resources in the district. These land use ordinances may be judicially enforced and court-ordered soil conservation work may be secured by a lien against the land upon which such work was completed.

Soil conservation districts may levy up to one mill, or more if approved by the electors of the district, for the payment of the district's expenses.

Model State Soil Conservation Law

The model state soil conservation law would supplement current state laws. The model law would require the State Soil Conservation Committee to establish a comprehensive state soil conservation plan, and would mandate district compliance with this comprehensive plan. Additionally, each district would be charged with enforcing compliance by individual landowners or occupiers by the use of land inspections upon reasonable cause that state soil conservation standards were not being complied with.

The model law provides for statewide cost-sharing and loan programs. The cost-sharing program, funded by a general fund appropriation, and the loan program, funded through the sale of state bonds, would assist in the establishment of permanent soil conservation practices and would facilitate the acquisition of conservation equipment.

The Act would also make certain land disturbing construction activities on nonagricultural land subject to state-approved sediment control plans. Violation of a sediment control plan would subject the contractor to civil penalties.

Testimony

Substantial testimony was received regarding the statewide mandatory soil conservation practices provided in the model law. Major issues were the necessity for mandatory soil conservation and whether mandatory conservation practices should be dictated at a state or district level.

Groups which generally oppose the model law include the North Dakota Farm Bureau, the Association of Soil Conservation Districts, the State Soil Conservation Committee, and the United States Department of Agriculture — Agriculture Stabilization and Conservation Service. Reasons given for this opposition include disagreements with the provisions mandating conservation practices at a statewide level, requiring district enforcement of state dictated conservation practices, and resulting increased costs.

Groups which generally support the model law include the North Dakota Farmers Union, the North Dakota Chapter of the Wildlife Society, the North Prairie Group of the Dakota Chapter of the Sierra Club, the North Dakota Wildlife Federation, Inc., the North Dakota Natural Farmers Association, and the Catholic Rural Life Conference. Suggestions by these groups for changes to the model law include enforcement at a state level or by state's attorneys, focusing on the worse-type soil practices, and allowing districts to set more restrictive standards based upon a statewide minimum standard.

Support for the model law has dissipated. The Midwestern Governors Conference, which had origi-

nally adopted the model law, reportedly now supports a federal "Sodbuster Act," which would eliminate federal aid to freshly tilled land which is fragile and erosion prone.

Mandatory soil conservation practices were the subject of substantial testimony and discussion. These mandatory practices can currently be imposed at a district level by a soil conservation land use ordinance. However, no land use ordinance has ever been adopted by a district under the present vote requirement. The three-fourths vote requirement is reportedly prohibitive and does not allow a district to adopt land use ordinances. Therefore, the Soil Conservation Committee recommended lowering the three-fourths voting majority requirement in NDCC Section 4-22-29.

The North Dakota Association of Soil Conservation Districts supported lowering the vote requirement. The association reported that this change is necessary to avoid mandatory soil conservation at a state or federal level, by allowing the districts more readily to adopt soil conservation, land use ordinances.

The committee received testimony regarding alternatives to statewide mandatory soil conservation practices. These alternatives included tax incentives, cost sharing, and additional educational programs. The Soil Conservation Committee testified that the district's ability to control soil erosion has been increased by the district's authority to levy taxes, the use of no-till equipment, and the soil classification survey map.

Recommendations

The committee recommends that the model state soil conservation law not be adopted in North Dakota. The committee favors local rather than statewide mandatory soil conservation practices.

The committee recommends House Bill No. 1044 to lower the vote requirement for adoption of soil conservation, land use ordinances by a soil conservation district from three-fourths of the district's voters voting in the referendum to two-thirds of the voters. This bill will more readily allow for the adoption of land use ordinances by districts. Although the committee considered lowering the voting requirement to 60 percent of the voters voting in the referendum, several members indicated that their district supervisors would not support a vote requirement lower than two-thirds.

LIVESTOCK SALES STUDY

The chairman of the Legislative Council directed the committee to undertake a study to determine the adequacy of state and federal laws relating to the licensure and bonding requirements for livestock auctions and dealers.

History

Livestock auction markets and dealers are regulated by both state and federal law. At the state level, the Public Service Commission and the Dairy Commissioner have previously regulated livestock auction markets and dealers. Presently, the Livestock Sanitary Board regulates livestock auction markets, while the Commissioner of Agriculture regulates livestock dealers. The laws relating to the regulation of the livestock sales industry, found in NDCC Chapters 36-04, 36-05, and 36-21, have seen little change during the past two decades.

Applicable Federal Laws

Livestock auction markets and dealers are regulated by the Federal Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), which vests regulatory authority in the Department of Agriculture — Packers and Stockyards Administration. The committee's study focused on four areas of the federal Act and the regulations adopted under the Act — registration, bonding, custodial accounts, and prompt payment requirements.

Federal registration of livestock auction markets and dealers is required, and may be revoked or suspended as provided in the regulations adopted under the Act. Applications for registration may be denied for a number of reasons, including insolvency, fraud, or dishonesty.

Bond amounts are based upon the volume of business conducted by the livestock auction market or dealer. The regulations set forth minimum bond requirements of $10,000. The Packers and Stockyards Act is not preemptive, and states may enforce higher bond requirements or higher minimum bonds.

Custodial accounts must be established by livestock auction markets for depositing and holding in trust payments made by livestock buyers, and prompt payment requirements mandate payments out of the account within a set time. Deposits must be made in a custodial account within a set number of business days, depending upon when they are collected. Payments out of the account may only be made to the seller of the livestock or to pay charges against the seller. Both dealers and auction markets are required to pay for livestock within a set time period following the sale and transfer of livestock.

Existing State Law

The Commissioner of Agriculture regulates livestock dealer licensure and bonding. The commissioner is required to refuse to issue or renew a license under NDCC Section 36-04-04 if the applicant does not have a proper surety bond, is insolvent, has wrongly failed to pay obligations incurred in connection with livestock transactions, or has made a false entry or statement in any application, financial statement, or report. Additionally, the commissioner may suspend or refuse a license under NDCC Section 36-04-10 when the applicant has violated state law, is guilty of deceit or fraud, has failed to keep suitable records, or has failed or refused to furnish information.

The Livestock Sanitary Board regulates livestock auction market licensure and bonding. The Livestock Sanitary Board may refuse or revoke a license for any of the reasons provided in NDCC Section 36-04-10.

The bonding of livestock auction markets and dealers is similar. Bond levels are determined pursuant to the formula adopted under the Packers and Stockyards Act, or a greater amount may be required when, in the regulatory agency's judgment, the volume of business warrants a greater bond. Rather than requiring the posting of two bonds, one federal and one state, the statutory provisions allow for the filing of the federal bond in lieu of a state bond. The minimum state bonding requirements are $10,000 for livestock auction markets and $5,000 for dealers.

NDCC Section 36-21-18 requires a purchaser at a livestock auction market to file satisfactory evidence that the purchaser's check or other negotiable instrument will be honored by the drawee bank. Additional-

ly, until such clerk or instrument is honored, title to the livestock remains in the market.

Recent Insolvencies

Three recent insolvencies have severely impacted the livestock industry in this state. The insolency which prompted the assignment of this study occurred to a livestock auction market in Carrington, where claims exceeded the market's bond by approximately $43,000. More recently, two dealers went insolvent reportedly owing in excess of $550,000. Based upon these insolvencies, testimony reflected the concern of individuals involved in the cattle industry.

Consolidation of Regulation

Testimony substantially favored consolidating the regulation of livestock auction markets and dealers into a single agency to eliminate gaps in industry regulation. Testimony suggested that public confusion exists regarding which facets of the industry are regulated by the two agencies involved. Three agencies were suggested for assumption of the combined regulatory authority — the Commissioner of Agriculture, the Livestock Sanitary Board, and the Public Service Commission.

Testimony favored vesting regulatory authority with the Commissioner of Agriculture. The reasons for this support include the favorable work done by the commissioner's Livestock Division, the ability of the commissioner to respond quickly to emergency situations, and the administrative ease of moving the regulation of 20 livestock auction markets as compared to 300 dealers.

The Livestock Sanitary Board testified that the regulation of livestock auction markets should remain with the board, adding that if the committee does remove these duties from the board then licensing should be contingent upon approval of sanitary conditions by the board.

The Public Service Commission testified that it is not seeking these regulatory duties, which would require the establishment of a livestock division within the Public Service Commission.

Bonding

Surety bond amounts have been inadequate to cover debts resulting from recent livestock auction market or dealer insolvencies. The Commissioner of Agriculture and the executive officer of the Livestock Sanitary Board testified that higher bond levels may be necessary.

Livestock auction market operators and dealers testified against higher bond requirements. Higher bond requirements, due to the inability to get such bonds, would reportedly drive a substantial portion of the livestock auction markets and dealers out of the industry. The reason for the inability to get higher bonds is not the price, which can range up to $10 per $1,000 of coverage, but rather a commercial requirement that the market owner or dealer have between five and 10 times the value of the bond in nonexempt property.

Licensing and Auditing

Quicker investigations of alleged infractions and the need for expedient revocation or suspension of licenses were supported by testimony. The need for quicker investigations was exemplified by reports that a livestock auction market had written nonsufficient fund (NSF) checks for several weeks prior to its insolvency.

The executive officer of the Livestock Sanitary Board testified regarding the need for statutory provisions mandating investigations of livestock auction markets. Reportedly, mandatory investigations would expedite license suspensions by insulating the board from liability for investigations prompted by what the board currently believes to be insufficient cause to investigate.

Testimony favored implementing an auditing system to provide for earlier detection of impending insolvencies. The Commissioner of Agriculture reported that financial statements must now be submitted with license applications and that the commissioner will be initiating an auditing program to review livestock dealers.

NSF Checks

Several individuals testified regarding problems which have resulted in the livestock sales industry due to the ruling by the North Dakota Supreme Court, in State v. Fischer, 349 N.W.2d 16 (N.D. 1984), that the NSF check law is unconstitutional.

Testimony suggested the need for the reporting of NSF checks to the Commissioner of Agriculture by either the livestock auction market or the drawee bank to expedite investigations of financially marginal dealers.

The establishment of state prompt payment and custodical account requirements was suggested. A custodial account, imposed upon livestock dealers, may reportedly provide further protection for livestock producers in insolvencies, prohibiting banks from setting off their claims against an account to the detriment of individuals holding NSF checks written on the account.

NDCC Section 36-21-18 allows livestock auction markets to retain title to livestock when an NSF check is given in exchange for the livestock. Testimony supported expanding the scope of this provision to cover all sellers of livestock.

Recommendations

The committee recommends Senate Bill No. 2043 to consolidate the regulation of livestock auction markets and dealers with the Commissioner of Agriculture, and to require certificiation of the sanitary condition of markets by the Livestock Sanitary Board prior to licensure. Due to this bill, the descriptions of the other bills recommended by the committee refer to "regulatory agency" rather than specifying the Livestock Sanitary Board or the Commissioner of Agriculture.

The committee recommends Senate Bill No. 2044 to grant cease and desist authority and greater investigative authority to the regulatory agency, mandating investigations and audits by the regulatory agency under certain circumstances, and requiring each livestock auction market to post signs with information regarding the regulation of the market. The bill amends NDCC Section 36-04-10 to require mandatory revocation of livestock auction market and dealer licenses. The bill also makes NDCC Section 36-04-04, pertaining to applications for dealer licenses, applicable to applications for livestock auction market licenses, thus increasing the license issuance and renewal authority of the regulatory agency. These changes are intended to expedite investigations of

financially marginal livestock auction markets and dealers, and to allow for quicker license revocation or suspension.

The committee recommends Senate Bill No. 2045 to require livestock auction markets and dealers to file, with their license applications, financial records releases which allow access by the regulatory agency to business financial records held by third persons, and to make confidential any information gained through the use of the releases. This bill is intended to allow the regulatory agency to gain imperative information during an investigation through the use of a records release executed before the investigation began.

The committee recommends Senate Bill No. 2046 to increase the minimum dealer bond requirement of $5,000 to $10,000. This bill will bring the statutorily established minimum dealer bond in line with the current minimum bond requirement of the Packers and Stockyards Administration.

The committee recommends Senate Bill No. 2047 to amend NDCC Section 36-21-18, which allows livestock auction markets to retain title to livestock until a check given in exchange for the livestock has cleared, by extending the section's application to all sellers of livestock. This bill will grant further protection to livestock owners who sell livestock to persons who subsequently become insolent.

Although the committee does not make any specific recommendations, the committee supports an NSF check law that would provide greater protection to livestock producers. This support is based on the committee's concern over the absence of an NSF check law that meets constitutional requirements.

BUDGET SECTION

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

Budget Section members were Representatives Charles F. Mertens (Chairman), Richard J. Backes, Eugene P. Boyle, Aloha Eagles, Walter C. Erdman, Ronald E. Gunsch, Orlin M. Hanson, Roy Hausauer, Dean K. Horgan, Tish Kelly, Harley R. Kingsbury, Tom Kuchera, Bill Lardy, Peter Lipsiea, Gene Martin, Corliss Mushik, Olaf Opedahl, Jim Peterson, Jean Rayl, Wayne G. Sanstead, Oscar Solberg, Earl Strinden, Kenneth N. Thompson, and Michael Unhjem; and Senators Perry B. Grotberg, William S. Heigaard, Evan E. Lips, L. L. Naaden, Gary J. Nelson, David E. Nething, Rolland W. Redlin, Bryce Streibel, Floyd Stromme, Harvey D. Tallackson, Jens J. Tennefos, Russell T. Thane, Malcolm S. Tweten, Jerome L. Walsh, and Frank A. Wenstrom. Senator Stella H. Fritzell, prior to her death in April 1984, was a member of the committee.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

At its organizational meeting, members were advised of Budget Section responsibilities directed by statutes which are as follows:

1. 1983 House Bill No. 1695 appropriates any federal funds that become available during the 1983-85 biennium for the renewal of services on the Amtrak North Coast Hiawatha route from Fargo to Spokane, Washington. These funds shall be expended upon approval of the Budget Section.
2. 1983 Senate Bill No. 2497 provides that the director of the Office of Management and Budget shall certify the amount of general fund revenue receipts for the period July 1, 1983, through April 30, 1984, to the Budget Section on or before May 15, 1984. If the amount certified is less than $400 million, the rate of sales and use tax shall be increased by one percent for the period beginning July 1, 1984, and ending June 30, 1985, unless the Budget Section determines that a tax increase is not necessary. The decision of the Budget Section shall be based upon the following guidelines and considerations:
   a. A review of the effect on projections by the Office of Management and Budget of the state general fund balance on June 30, 1985, if the one percent tax increase does not become effective.
   b. Any revenue collections that will be deposited during the remainder of the biennium, including effects on cash flow.
   c. The effect of the one percent tax increase on the economic welfare of the state and its citizens.
   d. The effect of changes in oil prices or other economic indicators on projections of revenue for the remainder of the biennium.
3. 1983 Senate Concurrent Resolution No. 4013 authorizes the Budget Section to hold the public legislative hearings required for the receipt of block grant or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes. The Budget Section authority is in effect through September 30, 1984.
4. Section 50-06-05.1(18) of the North Dakota Century Code provides that the Department of Human Services, with the consent of the Budget Section, may terminate the food stamp program should the rate of federal financial participation in administrative costs provided under Public Law 93-347 be decreased or limited, or should the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
5. Section 50-06-05.1(20) provides that the Department of Human Services, with the consent of the Budget Section, may terminate the energy assistance program should the rate of federal financial participation in administrative costs be decreased or limited to less than 50 percent of the total administrative costs, or should the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
6. The 1973 Legislative Assembly assigned the duties of the Auditing Board to the Executive Budget Office. Section 54-14-03.1 requires the Executive Budget Office to report to the Budget Section irregularities, discovered during the preaudit of claims, which point to the need of improved fiscal practices. The report must be in writing, documenting irregularities.
7. Section 15-10-18 requires institutions of higher education to charge nonresident students tuition in amounts to be determined by the State Board of Higher Education with the approval of the Budget Section.
8. The Budget Section is to review and act upon State Board of Higher Education requests, pursuant to Section 15-10-12.1, for authority to construct buildings or campus improvements on land under the board's control which construction is financed by donations, gifts, grants, and bequests; and to act upon requests from the board for authority to sell any property or buildings which an institution of higher education has received by gift or bequest.
9. The Budget Section is to review, prior to the 1985 legislative session, the executive budget for the 1985-87 biennium.
10. Section 54-16-01 allows transfers from the state contingency fund by the Emergency Commission to exceed $500,000 only to the extent that requests for transfers have been approved by the Budget Section.
11. 1983 Senate Bill No. 2001 provides that the State Tax Commissioner report quarterly the progress made in collecting additional tax revenues as a result of the enhanced audit program approved by the 1983 Legislative Assembly.

As of its last meeting, the Budget Section had not received notification of federal funds available during

the 1983-85 biennium for the renewal of the Amtrak North Coast Hiawatha route services.

No public legislative hearings were required by the Budget Section for the receipt of block grants or other federal moneys under the Omnibus Budget Reconciliation Act of 1981.

The Budget Section did not receive requests from the Department of Human Services to terminate the energy assistance or food stamp programs as a result of a decrease in the rate of federal financial participation.

The Budget Section did not receive any reports from the Executive Budget Office of irregularities discovered during the preaudit of claims.

Also, the Budget Section did not receive any requests for transfers from the state contingency fund by the Emergency Commission in excess of $500,000.

CONTINGENT ONE PERCENT SALES AND USE TAX INCREASE

1983 Senate Bill No. 2497 provides that the director of the Office of Management and Budget shall certify the amount of general fund revenue receipts for the period July 1, 1983, through April 30, 1984, to the Budget Section on or before May 15, 1984. If the amount certified is less than $400 million, the rate of sales and use tax shall be increased by one percent or $50 million for the period beginning July 1, 1984, and ending June 30, 1985, unless the Budget Section determines that a tax increase is not necessary.

On May 15, 1984, the director of the Office of Management and Budget in consultation with the State Tax Commissioner and State Treasurer certified that the amount of general fund revenue receipts as of April 30, 1984, were $437,878,817.21, or $37,878,817.21 in excess of the $400 million required.

The Budget Section accepted the report by the Office of Management and Budget certifying general fund revenue receipts of $437,878,817.21 and since revenues were greater than $400 million the contingent tax increase was not enacted.

STATE BOARD OF HIGHER EDUCATION

The Budget Section was briefed on changes in the reciprocity agreement with Minnesota. Tuition rates are established by category of institution and reflect average resident rates for similar institutions in North Dakota and Minnesota for each category. The North Dakota general fund will no longer receive payments from Minnesota since the students will be making payments directly to the institutions.

In accordance with Section 15-10-18, the Budget Section approved the nonresident tuition rates charged by the State Board of Higher Education as approved in appropriation bills by the Legislative Assembly.

University undergraduate tuition rate increases for 1983 and 1984 school years are 21 percent and seven percent, respectively, including a $45 tuition surcharge. College undergraduate tuition rate increases for 1983 and 1984 school years are 21 percent and nine percent, respectively. Also included were tuition rate increases for graduates at least equivalent to undergraduate increases. The tuition rates are as follows:

Nonresident School Term Tuition Rates

	1982		1983		1984	
	Undergraduate	Graduate	Undergraduate	Graduate	Undergraduate	Graduate
Universities	1,398	1,506	1,692	1,956	1,812	2,100
Colleges	1,131	1,263	1,371	1,521	1,488	1,638

Pursuant to Section 15-10-12.1 the Budget Section reviewed and approved a State Board of Higher Education request to construct an annex to the Aerospace Science Center at the University of North Dakota. UND received funds to pay for the annex and additional equipment from a Federal Aviation Administration (FAA) grant. The grant was for $2.75 million, $1.5 million for construction of the annex and $1.25 million for additional equipment.

The Budget Section expressed interest in receiving information about costs related to new and additional facilities constructed with federal and donated funds.

The Budget Section recommended that the executive budget include information on anticipated costs during the next biennium resulting from new and additional facilities arising from federal and donated funds. The Budget Section recommendation relates to higher education institutions as well as all other state agencies and institutions.

PUBLIC INFORMATION ACTIVITY SURVEY

The Budget Section, by motion, asked the Legislative Council staff to survey state agencies and institutions regarding the number of persons performing public information activities and the cost, nature, and frequency of such activities. Public information activities were defined as any method used to inform persons outside the agency or institution or the general public about agency or institution activities. Procedures might include press releases, newsletters, magazines, and time or space in radio, television, or newspaper. Documents such as minutes of meetings prepared with the main purpose being for other than public information, even though distributed to the public, are excluded. Also, meeting notices required to be distributed by law would be excluded.

The committee heard testimony by state agencies and institutions that have employees or contract with persons to provide public information services.

After reviewing the survey results and testimony given, the Budget Section passed a motion encouraging state agencies, institutions, and departments to curtail the use of contracted public relations services, and to again utilize such services only if approved by the Legislative Assembly. Prior to the Legislative Assembly's action regarding public relations services, the Appropriations Committees should review the need for the services, competitive bidding, and the requirement that persons providing services disclaim association with the news media. The motion was distributed to each state agency and institution.

The Legislative Council staff informed the Budget Section about the number of employees and consultants performing public information activities and the estimated amounts paid to each. The Budget Section heard the nature of services performed, such as press releases, newsletters, magazines, and reports.

The results of the Legislative Council public infor-

mation activities survey were as follows for the fiscal year ended June 30, 1983:

Number of Employees Performing Activities	Number of Parties Performing Contracted Services	Estimated Amount Paid to Employees	Estimated Amount Paid for Contracted Services
131	30	$836,575	$117,251

Since in some instances public information activities work was performed incidental to employee duties and was not material or recurring, no salary amount was included. The services were performed by 18 parties with some of the same parties providing services to more than one agency.

The following information was presented by agencies and institutions justifying public information activities:

1. Required by law to provide information to the public.
2. Necessary to disseminate information regarding program availability – such as agricultural loan programs.
3. Necessary for public safety – such as the hunter education program.
4. Informing the public of research results – such as the Geological Survey and Department of Agriculture.
5. Information for potential college students regarding college and university educational opportunities.
6. Informing the public about job opportunities.

STATUS OF STATE GENERAL FUND

At each of the Budget Section meetings, a representative of the Office of Management and Budget (OMB) reviewed the status of the state general fund. Included below is a comparison of 48th Legislative Assembly general fund balances compared to revised estimates or actual balances from June 1983 through June 1985:

	48th Legislative Assembly Estimates	OMB Revised Estimates	Actual Balances
July 1, 1983	$16,000,000	$55,000,000	$55,998,191
July 1, 1984	23,600,000	62,600,000	110,077,607
September 30, 1984		50,500,000	109,200,000
July 1, 1985	37,394,204	64,609,000	N/A

As of October 1984 it was reported to the Budget Section that actual general fund disbursements were $6.7 million lower than estimated while actual general fund revenue receipts were $672.5 million, exceeding estimates by $51.9 million.

A comparison of actual to estimated general fund revenue through September 30, 1984 (in thousands of dollars) follows:

	Official Revenue Estimate	Actual Revenue	Variance	Percentage Variance
Sales and use taxes	$247,825	$251,512	$3,687	1.5
Income taxes	139,698	148,966	9,268	6.6
Business privilege tax	1,366	1,599	233	17.1
Cigarette and tobacco tax	15,861	13,648	(2,213)	-14.0
Oil and gas production tax	60,675	71,564	10,889	17.9
Oil extraction tax	86,628	99,564	12,936	14.9
Coal severance tax	7,524	7,854	330	4.4
Coal conversion tax	8,460	9,051	591	7.0
Insurance premium tax	13,154	14,296	1,142	8.7
Wholesale liquor tax	8,366	7,335	(1,031)	-12.3
Departmental collections	11,187	10,119	(1,068)	-9.5
Interest income	8,767	17,476	8,709	99.3
Mineral leasing fees	6,200	14,040	7,840	126.5
Reciprocity payments	462	1,054	592	128.1
Bank of North Dakota profits transfer	2,500	2,500	0	0.0
State Mill profits transfer	1,500	1,500	0	0.0
Gas tax administration	408	410	2	0.5
Total revenue	$620,581	$672,488	$51,907	8.4

In accordance with the September 1983 report to the Budget Section, the June 30, 1985, revised estimated general fund balance was $64.609 million. The general fund balance as of September 30, 1984, was $109.2 million compared to the estimated $50.5 million. The June 30, 1985, general fund balance is now estimated to be in excess of $65 million.

OIL AND GAS PRODUCTION AND OIL EXTRACTION TAX REVENUE

The Legislative Council staff presented reports to the Budget Section comparing forecasted oil production and market prices to actual and general fund oil and gas production and oil extraction tax revenue forecasts to actual collections.

COMPARISON OF FORECASTED OIL PRODUCTION AND MARKET PRICES TO ACTUAL

Production Period Quarter Ending	Oil Production (In Barrels)			Market Prices (Per Barrel)		
	Forecasted	Actual	Over (Under)	Forecasted	Actual [1]	Over (Under)
September 30, 1983	11,597,500	12,619,930	1,022,430	$29.00	$29.50	$.50
December 31, 1983	11,356,142	12,687,211	1,331,069	29.00	29.50	.50
March 31, 1984	10,849,969	12,932,243	2,082,274	30.00	29.15	(.85)
June 30, 1984	10,754,981	13,028,974	2,273,993	31.00	29.15	(1.85)
Fiscal Year 1984	44,558,592	51,268,358	6,709,766			
July-August 1984	7,200,990	9,093,398	1,892,408	32.00	29.15	(2.85)
Fiscal Year 1985 2/	37,804,980			$32.00		

1/ Amoco posted field prices for North Dakota sweet crude.

2/ Actual production amounts for August will be revised.

NOTE: This does not include June 1985 forecast as it has not yet been made.

COMPARISON OF GENERAL FUND OIL AND GAS PRODUCTION AND OIL EXTRACTION TAX REVENUE FORECASTS TO ACTUAL COLLECTIONS (IN MILLIONS OF DOLLARS)

Collection Period Quarter Ending	5% Oil and Gas Production Tax			6.5% Oil Extraction Tax		
	Forecasted	Actual	Over (Under)	Forecsted	Actual	Over (Under)
September 30, 1983	$13.7	$14.7	$1.0	$22.0	$24.0	$2.0
December 31, 1983	10.0	12.3	2.3	16.2	18.5	2.3
March 31, 1984	11.7	14.0	2.3	16.0	18.7	2.7
June 30, 1984	12.8	15.8	3.0	16.0	18.9	2.9
Fiscal Year 1984	$48.2	$56.8	$8.6	$70.2	$80.1	$9.9
September 30, 1984	$12.5	$14.7	$2.2	$16.4	$19.5	$3.1
Fiscal Year 1985	$51.0			$69.8		

The report also included revenue forecasts of all oil extraction and oil and gas production taxes for the 1983-85 biennium.

REVENUE FORECASTS AS ADOPTED BY THE 48TH LEGISLATIVE ASSEMBLY OF ALL OIL EXTRACTION AND OIL AND GAS PRODUCTION TAXES FOR THE 1983-85 BIENNIUM (MILLIONS OF DOLLARS)

	General Fund	Resources Trust Fund	Road Fund	Counties	Total
Oil extraction tax	$140.02	$15.56			$155.58
Oil and gas production tax	99.2		$3.44 [1]	$42.87	145.51
Total	$239.22	$15.56	$3.44	$42.87	$301.09

1/ This is the last three-month distributions of moneys to the road fund earmarked by the 1981 Legislative Assembly.

The Legislative Council staff reported the number of new wells from July 1983 through December 1983 were 270 and from January 1, 1984, through August 1984 were 436, for a total of 706 new wells to date. Of the 706 new wells, 387 are producing oil. There are 4,133 wells capable of producing oil in the state.

FEDERAL FUNDS INFORMATION FOR STATES

The Legislative Council and the Office of Management and Budget jointly subscribed to Federal Funds Information for States (FFIS). The director of FFIS presented at the November 1983 Budget Section meeting an overview of the federal budget process and information on the FFIS program. The program is supported by the National Conference of State Legislatures and National Governors Association. Publications of major analysis are made four times a year:

1. Revealing the presidential budget request, approximately February 15;
2. Reflecting congressional budget resolutions, approximately May 15;
3. Reflecting the second concurrent budget resolution with any necessary reconciliation acts, in early October; and
4. A "floating" analysis distributed to reflect major action during the year, such as in the case of a continuing resolution or upon passage of a major bill.

Newsletters on selected topics are printed a minimum of eight times a year.

The director of FFIS distributed a newsletter indicating the federal matching percentage for Medicaid, Aid to Families with Dependent Children (AFDC), and foster care payments have varied greatly and are scheduled to decrease from 61.32 percent to 55.12 percent or 6.2 percent beginning October 1, 1985, a decrease of approximately $19 million for the 1985-87 biennium. The decrease of the federal matching percentage means an increase of $17 million state general fund moneys and $2 million county participation increase, a total of $19 million.

The Budget Section encouraged by motion the North

Dakota Congressional Delegation to sponsor legislation limiting the reduction in federal matching percentage for Medicaid and AFDC payments.

In response to this motion, a section was included by the United States Congress in the labor, health, and human service, and education appropriations bill directing the Health Care Financing Administration (HCFA) to conduct a study regarding the federal matching assistance percentage. The bill directs HCFA to study ways to improve the formula used to calculate the federal medical assistance percentage for Medicaid funding to states, possibly by updating the formula calculation annually and developing alternatives to minimize matching changes experienced by states with large per capita farm income.

The North Dakota Congressional Delegation is encouraging HCFA to proceed with the federal matching percentage study. Copies of letters from the North Dakota Congressional Delegation including a joint letter to HCFA from United States Senators Andrews and Burdick have been received.

SALARY AND WAGE APPROPRIATIONS ANALYSIS

At the May 1984 meeting, while reviewing the Governor's $60 per month salary increases for employees through grade 29, Budget Section members asked questions regarding salary increases given and potential general fund turnbacks. Information was requested regarding employee turnover, salary and wage Emergency Commission transfers, and estimated compared to revised estimated or actual payroll expenditures for the 1983-85 biennium. The Budget Section, by motion, asked the Legislative Council staff to conduct a survey addressing these concerns.

The Legislative Council staff presented an analysis of North Dakota state agency and institution appropriations for salaries and wages for the 1983-85 biennium. Approximately 86 percent or 9,750 of the 11,357 state employees employed by agencies and institutions were included in the analysis. The average fringe benefit for the 9,750 employees is 19.07 percent for the first year and 21.87 percent for the second year of the biennium.

ANALYSIS OF NORTH DAKOTA STATE AGENCY AND INSTITUTION APPROPRIATIONS FOR SALARIES AND WAGES FOR THE 1983-85 BIENNIUM

	Year 1			Year 2					
	Estimated (Amount Estimated at Beginning of Biennium)	Actual Amount Expended	Difference (Estimated-Actual)	Estimated (Amount Estimated at Beginning of Biennium)	Current Revised Estimates	Difference (Estimated-Current Revised)	Total Estimated Amounts Years 1 and 2	Total Actual and Current Revised Estimates Years 1 and 2	Total of Years 1 and 2 Differences (1983-85 Biennium)
Salaries and wages	$234,565,209	$230,706,398	$(3,858,811)	$242,544,461	$247,854,066	$5,309,605	$477,109,670	$478,560,464	$1,450,794
Less: Estimated income	119,656,207	121,828,083	(2,171,876)	124,756,673	130,932,958	(6,176,285)	244,412,880	252,761,041	(8,348,161)
Total general fund	$114,909,002	$108,878,315	$(6,030,687)	$117,787,788	$116,921,108	$(866,680)	$232,696,790	$225,799,423	$(6,897,367)

The Legislative Council staff reported that for the 1983-85 biennium, state agencies and institutions included in the survey estimate an increase of $1.4 million in salary and wage expenditures, with special fund collections estimated to be $8.3 million more than estimated for a total general fund savings of $6,897,367. The general fund savings attributable to state agencies and institutions other than under the control of the Board of Higher Education and that attributable to higher education are $3.36 million and $3.53 million, respectively. The analysis of the differences between estimated, actual, and current revised estimated expenditures for years 1 and 2 and total of years 1 and 2 is presented below:

	Year 1	Year 2	Total 1983-85 Biennium	
Add:				
Employee turnover	$6,069,046	$3,799,596	$9,868,642	
Estimated income received, not anticipated	4,853,583	6,318,492	11,172,075	
Total	$10,922,629	$10,118,088		$21,040,717
Less:				
Cost of salary increases	$ 805,850	$4,596,621	$5,402,471	
Additional employees	1,740,937	3,466,853	5,207,790	
Temporary positions	(405,492)	612,426	206,934	
Estimated income anticipated, not received	1,013,083	31,327	1,044,410	
Other	1,737,564	544,181	2,281,745	
Total	$4,891,942	$9,251,408		$14,143,350
Estimated general fund savings	$6,030,687	$866,680		$6,897,367

Included in the $8.3 million increase in special fund collections are:

1. Job Service North Dakota — $2.2 million more than anticipated since federal funds were not reduced as much as estimated.
2. North Dakota State University — $1.4 million more than anticipated because of a larger operating fund carryover, a transfer from the Board of Higher Education contingency fund, and student enrollments over projections.
3. Grafton State School — $2.06 million more than anticipated, contingent upon final Title XIX certification.

The Budget Section heard testimony from the Office of Management and Budget, State Highway Department, Board of Higher Education, Department of Human Services, Director of Institutions, State Health Department, and North Dakota Public Employees Association. They reported that in their opinion the following are difficulties regarding administering salary and wage appropriations:

1. Within the range of compensation in the classi-

fied system it is difficult to hire at the minimum level, especially when salary ranges are frozen.
2. Budget guidelines of average percentage increases encourage employee expectations of uniform raises. Guidelines on dollars available to departments rather than average percentage increases should be emphasized.
3. The current classification system does not fully recognize years of experience.
4. In some instances there is not confidence that the 1984 Central Personnel Division salary survey used statistically valid techniques.

The Budget Section asked the Legislative Council staff to arrange for additional salary information including the median salary received by state employees for the December 1984 meeting and for state agencies and institutions to present their evaluations of the techniques used in the 1984 Central Personnel Division salary survey — specifically the information gathered, methods utilized, and ultimately the effect of the survey.

ENHANCED AUDIT PROGRAM REPORTS

At each Budget Section meeting, the State Tax Commissioner presented a report regarding the enhanced audit program. The program, requiring a $960,000 appropriation, is to fund an increased audit and compliance activity to produce an additional $10.1 million in tax revenues during the 1983-85 biennium. The $10.1 million includes $4.25 million corporate income taxes, $.725 million individual income taxes, $1.5 million oil and gas taxes, and $3.65 million sales taxes.

At the last Budget Section meeting, the State Tax Commissioner reported the enhanced audit program at approximately 117 percent of the goal to date or $1.05 million ahead of projections. Of the $10.1 million in anticipated collections for the biennium, $7.2 million had been collected through September compared to a goal of $6.1 million. Corporate income and individual income tax collections were at $4.1 million and $586,000, respectively, compared to estimates of $2.65 million and $465,000, with sales and oil and gas taxes at $1.8 million and $755,000, respectively, compared to estimates of $2.2 million and $814,000.

SOUTHWEST PIPELINE PROJECT

The Budget Section heard reports regarding the Southwest Pipeline Project financing. The Legislative Assembly provided for a bond issue to finance the project. Since the 1984 Supreme Court in State of North Dakota ex rel. Lesmeister v. Olson held that the bond issue is subject to the $2 million debt limitation, the State Water Commission has outlined the following financing proposals for the 1985-87 biennium:

1. A phased-in construction to be built with the amount of funds appropriated by the Legislative Assembly. The project would be completed in three bienniums.
2. An upfront appropriation for the initial facilities — the intake structure and pumping plant — with submission to the voters of a constitutional amendment to finance the remainder of the project.

The 48th Legislative Assembly appropriated $6 million to the Southwest Pipeline Project for the 1983-85 biennium for final design, plans, and specifications, and to acquire right of way and other easements and fee title for the project and to obtain regulatory permits. At its last meeting, the Budget Section heard progress reports for the pipeline project. The Southwest Pipeline Project is in the final design period. The right-of-way acquisition and plantsite land phase is three-fourths complete. All final designs will be completed by June 30, 1985.

The State Water Commission presented the following budget for the Southwest Pipeline Project for the 1985-87 biennium: (1) a request for $24 million from the resources trust fund, based on a proposed allocation of 15 percent of oil extraction taxes to the fund; (2) restoration of the $11.7 million received by Grafton State School to the fund; and (3) a contingency appropriation of $300,000 to continue project activities if the Legislative Assembly does not appropriate moneys for construction.

TOUR GROUPS

During September and October 1984, Budget Section members visited major state agencies and institutions to hear and evaluate requests for major improvements and structures, and to hear any problems institutions might be encountering during the interim.

The tour group minutes are available in the Legislative Council office and will be submitted in indexed form to the Appropriations Committees during the 1985 legislative session. The members of each tour group and the institutions visited are as follows:

Tour Group No. 1 — Senator Perry B. Grotberg, Chairman

Membership:

Representative Aloha Eagles
Representative Orlin M. Hanson
Representative Bill Lardy
Representative Wayne G. Sanstead
Representative Oscar Solberg
Representative Kenneth N. Thompson
Senator Perry B. Grotberg
Senator Bryce Streibel
Senator Harvey D. Tallackson
Senator Jerome L. Walsh

Institutions Assigned:

Radio Communications
Bismarck Junior College
State Industrial School
State Penitentiary
State Farm
Alpha Opportunities, Inc. — developmental day and work activity facility
State Hospital
Valley City State College
Open Door, Inc. — developmental day and work activity facility
State School of Science
Veterans' Home

Tour Group No. 2 — Representative Gene Martin, Chairman

Membership:

Representative Tish Kelly
Representative Tom Kuchera
Representative Peter Lipsiea
Representative Gene Martin
Representative Charles F. Mertens
Representative Earl Strinden
Senator Rolland W. Redlin
Senator Jens J. Tennefos
Senator Malcolm S. Tweten

Institutions Assigned:

Southwest Multicounty Correction Center
Dickinson State College
Badlands Human Service Center — chronically mentally ill and transitional community living facilities
Dickinson Experiment Station
Opportunities, Inc. — developmental day activity center
Northwest Human Service Center — partial care program/chronically mentally ill
UND-Williston
Williston Experiment Station
Minot Developmental Vocational Adjustment Workshop
North Central Human Service Center — chronically mentally ill transitional living home
Minot State College
State Fair Association
North Central Experiment Station

Tour Group No. 3 — Senator Evan E. Lips, Chairman

Membership:

Representative Richard J. Backes
Representative Eugene P. Boyle
Representative Walter C. Erdman
Representative Roy Hausauer
Representative Harley R. Kingsbury
Representative Corliss Mushik
Representative Jim Peterson
Senator Evan E. Lips
Senator Gary J. Nelson
Senator Floyd Stromme
Senator Frank A. Wenstrom

Institutions Assigned:

NDSU Extension Service
NDSU Experiment Station
Northern Crops Institute
Division of Independent Study
North Dakota State University
Southeast Human Service Center
Mayville State College
School for the Blind
Agassiz Enterprises
University of North Dakota
Medical Center Rehabilitation Hospital
UND Medical School
North Dakota Mill and Elevator Association

Tour Group No. 4 — Representative Olaf Opedahl, Chairman

Membership:

Representative Ronald E. Gunsch
Representative Dean K. Horgan
Representative Olaf Opedahl
Representative Jean Rayl
Representative Michael Unhjem
Senator William S. Heigaard
Senator L. L. Naaden
Senator David E. Nething
Senator Russell T. Thane

Institutions Assigned:

School for the Deaf
Lake Region Community College
Lake Region Instructional Developmental Workshop — work and day activities, transitional community living facility
Lake Region Human Service Center — transitional living home for chronically mentally ill
Camp Grafton
Grafton State School
San Haven
International Peace Garden
Lake Metigoshe State Park
NDSU-Bottineau
State Forest Service

The Budget Section supported the State Historical Society's decision to repair the water treatment plant at the International Peace Garden using funds remaining from the appropriation to repair the International Peace Garden's sewer system.

The Budget Section received and approved annual reports from the Land Research Reclamation Center. The center's primary responsibility is to research the best available methods for restoring mineral lands at the lowest possible cost.

The center recommends the following steps to improve reclaimed land productivity and/or reduce reclamation costs:

1. Base the depth of soil replacement on the chemical and physical characteristics of the reshaped spoil materials.
2. Continue to request the USDA office of surface mining and the USDA Soil Conservation Service to approve variances to permit similar prime and nonprime subsoil material mixings, and urge revision of the segregation of prime soil materials requirement.
3. Utilize results from runoff and erosion studies on reshaped spoil to calculate the necessary volume of sediment ponds.
4. When planning and monitoring the depth of replaced soil materials, consider the decrease in volume of replaced soil materials and compare to the same materials in the undisturbed state.

OTHER BUDGET SECTION ACTION

The Budget Section received reports on the status of deinstitutionalization of Grafton State School, the status of the Dickinson Experiment Station land, and the State Farm land sale.

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

BUDGET "A" COMMITTEE

The Budget "A" Committee was assigned three study resolutions. House Concurrent Resolution No. 3004 directed a study to determine the adequacy and appropriateness of the funding of postsecondary education and to develop a long-range plan for future funding of postsecondary education in North Dakota. House Concurrent Resolution No. 3053 directed a study to determine the feasibility and efficiency of placing all state laboratories in a central laboratory facility, to determine methods which reduced laboratory costs and best utilize laboratory space and equipment, and to analyze the building and other costs of a consolidated laboratory. House Concurrent Resolution No. 3067 directed a study to determine the possible uses of existing state facilities and the needs of the state with emphasis on establishment of priorities, and to establish the best use of state facilities.

Committee members were Senators Bryce Streibel (Chairman), William S. Heigaard, Thomas Matchie, L. L. Naaden, Joseph A. Satrom, Jens J. Tennefos, and Russell T. Thane; and Representatives Eugene P. Boyle, Judy L. DeMers, Orlin M. Hanson, Brynhild Haugland, Dean K. Horgan, Tom Kuchera, Peter Lipsiea, Gene Martin, Charles F. Mertens, Jim Peterson, Jean Rayl, Verdine D. Rice, and Kenneth N. Thompson.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

FUNDING POSTSECONDARY EDUCATION

Background

House Concurrent Resolution No. 3004 cites testimony received by the Higher Education Study Commission during the 1981-83 biennium as to the need for an in-depth study of the financing of state supported institutions of postsecondary education in North Dakota as enrollment projections for the state's institutions indicate there will be a moderate rise in enrollment in the early part of the 1980's followed by a decline during the middle 1980's and subsequent significant increases in enrollment in the early 1990's. The resolution states that the use of formula funding by some institutions and minimum funding practices by other institutions may be inappropriate methods for funding institutions during periods of enrollment instability.

During the late 1960's the formula funding concept was established at three of the institutions of higher education — University of North Dakota, North Dakota State University, and North Dakota State School of Science. This formula funding concept provided a methodology of computing faculty positions to be funded based on expected FTE student enrollments at the institutions. In the early years of this funding concept, support costs for the faculty positions were computed as a percentage of the dollars provided for the faculty positions. The support costs included necessary secretarial services, supplies, travel costs, etc. In addition, libraries were funded by providing a set dollar amount per student at the institutions. These funding methods for faculty support costs and library costs were discontinued during the mid-1970's. The 1983 Legislative Assembly, in agreement with executive budget recommendations, did not fully fund the formula concept due to budget restrictions. The other institutions of higher education not under the formula funding concept are provided faculty positions on a minimum staffing concept.

1981-83 Higher Education Study Commission

1983 Senate Bill No. 2404 created the 1981-83 Higher Education Study Commission and charged it with the responsibility to review the entire structure of the higher education system in North Dakota, including public and private institutions of higher education, vocational education, and continuing education.

In summary, the Higher Education Study Commission recommended the following:

1. The three community colleges in the state (Bismarck Junior College, UND-Williston, and Lake Region Community College) be brought under the governance of the state. The 1983 Legislative Assembly passed Senate Bill No. 2073 which provides for that governance effective July 1, 1984.
2. House Concurrent Resolution No. 3003, providing for statewide goals for postsecondary education, which passed the 1983 Legislative Assembly.
3. House Bill No. 1076, relating to the authority of the State Board of Higher Education to enter into agreements with regional education compacts. This bill passed the 1983 Legislative Assembly.
4. House Concurrent Resolution No. 3004, which directed a study of the financing of higher education in North Dakota.

Higher Education Appropriations

The committee received a Legislative Council report indicating legislative appropriations for higher education have grown from a total of $89.6 million, $59.4 million from the general fund, for the 1973-75 biennium to $291 million, $195.1 million from the general fund, for the 1983-85 biennium. These appropriations include the appropriations for the institutions of higher education, vocational education grants, and state aid to junior colleges.

Higher Education Enrollments

House Concurrent Resolution No. 3004 expressed a concern that enrollment projections for the state institutions indicate there will be a moderate rise in enrollment in the early part of the 1980's, followed by a decline during the middle 1980's and a subsequent significant increase in enrollments in the 1990's. The following schedule details projected enrollments at all state supported institutions of higher education (including the three community colleges) for the school years 1983-84 through 1990-91:

School Year	Systemwide Projected Headcount Enrollments
1983-84	32,185
1984-85	31,052
1985-86	29,581
1986-87	28,195
1987-88	27,584
1988-89	27,720
1989-90	27,664
1990-91	27,490

Higher Education Funding Study Task Forces

The committee accepted the Board of Higher Education's offer to organize task forces to study higher education funding. Committee members attended the organizational meeting of the task forces in September 1983 and various meetings throughout the study period.

The higher education funding study task forces, consisting of Board of Higher Education staff and staff from state institutions of higher education, studied the following areas:

1. Access to postsecondary education.
2. Faculty compensation.
3. Program staffing.
4. Instruction and academic support costs.
5. Equipment.
6. Computers.
7. Facilities maintenance.
8. Research.
9. Student services and institutional support.
10. Facilities adequacy.

The higher education funding study task forces presented a preliminary report of their recommendations at the January 1984 committee meeting. At the October 1984 committee meeting the Commissioner of Higher Education presented a summary of the funding study report including funding priorities and Board of Higher Education recommendations relating to the priorities. In addition, the preliminary report, including detail on the task force recommendations, was adjusted to reflect the Board of Higher Education action.

The summary of the funding study report includes the following priority ranking for implementation of the recommendations:

Recommendation and Priority	Recommendation
1. Faculty compensation	Restoration of faculty salaries to a more competitive level within the region and the nation.
2. Program staffing	The formulas used to calculate entitlement to faculty positions should be made more consistent with the actual need for positions at the colleges and universities and with regional and national standards. Minot State College should be funded through the formula. The formula should be fully funded.
3. Instruction and academic support	Continue incremental funding approach but increase the number of personnel to reflect enrollment increases; develop a phased plan for library acquisition and automation; initiate a state-funded instructional development program.
4. Equipment	Reevaluate process for inventorying equipment; examine the feasibility and cost effectiveness of leasing equipment; accelerate equipment replacement cycles, and initiate equipment surfunds.
5. Computers	Increase funding for the computer activities with special emphasis on associated personnel to maintain North Dakota's position relative to comparable colleges and universities.
6. Facilities maintenance	Implement the "North Dakota" formula; move institutions to the formula's minimum levels through a phased approach.
7. Research	Initiate a research advancement program through direct state-funded support for research.
8. Student services and institutional support	Continue to fund on an incremental basis; examine the feasibility of combining these budget functions into a single category.
9. Facilities adequacy	Continue current funding practices.

Recommendations

The committee accepted the reports of the higher education funding study task forces at its January 1984 committee meeting and adopted the recommendations included in those reports. At the committee's March 1984 meeting several committee members, including members absent from the January 1984 meeting, moved to have the committee's adoption of the recommendations reconsidered and the motion failed. Some committee members were concerned that a commitment regarding funding the recommendations might be implied because of the January action while others believed they had approved the task forces' work, but not necessarily the adoption of the recommendations. The Board of Higher Education and the institutions under its control then developed funding alternatives to implement the recommendations. The following schedule shows the recommendations adopted by the committee, the Board of Higher Education's consideration of those recommendations, and the Board of Higher Education's suggested funding for those recommendations in the 1985-87 institutional budget requests:

	Board of Higher Education Recommendations and Amounts Included in Higher Education Budget Requests for the 1985-87 Biennium
Compensation	
Recommendation No. 1: Acting in consultation with the Council of Presidents, the commissioner should appoint a committee to conduct a regression analysis study of variables relating to faculty salary equity within the system for all full-time tenured or tenure track faculty wholly funded on 1983-84 appropriated moneys.	Board of Higher Education appointed a salary committee to compare North Dakota faculty salaries by type of institution to similar institutions in other states.
Recommendation No. 2: Salary increase proposals for the 1985-87 biennium should devote specific attention to (1) recruitment and retention problems and those academic disciplines in which North Dakota's colleges and universities are experiencing particular difficulties in retracting or retaining faculty; (2) the greater discrepancy between our state's faculty salaries at the more senior professorial ranks (associate and full professor) when compared to national levels than is true at the assistant professor level; and (3) achieving salary equity for female faculty members.	The Board of Higher Education recommended an 11.6 percent salary market adjustment to be effective January 1, 1985, and annual salary increases of five percent. The total estimated cost of the salary package is $35.3 million for the institutions of higher education.
Program Staffing	
Recommendation No. 3: Allow all institutions to define a full-time undergraduate student equivalent as one whose load is a minimum of 15 student credit hours (SCH) per semester/term for "academic" courses. FTE students enrolled in occupational-type courses should continue to be counted on the basis of 18 SCH per FTE.	The Board of Higher Education endorsed full funding of the present formula (16 undergraduate student credit hours per FTE student) and the concept of moving the student/faculty ratio to 15 to 1. The board recommended institution budgets include funds for restoration of a student/faculty ratio of 16 to 1.
Recommendation No. 4: Discontinue funding Minot State College as a minimum staffed institution and commence funding it according to the same formula used to fund North Dakota State University, the University of North Dakota, and North Dakota State School of Science.	The Board of Higher Education approved.
Recommendation No. 5: Full funding of the formula at the University of North Dakota, North Dakota State University, Minot State College, and North Dakota State School of Science; and the minimum staff levels established for the remaining institutions governed by the State Board of Higher Education.	The Board of Higher Education approved. The total cost included in the 1985-87 budget requests for recommendations 4 and 5 is $8,154,910 which provides funds for 120.1 faculty positions.
Recommendation No. 6: Change the student-faculty ratio in upper division courses in the allied health academic disciplines from 17:1 (12:1 in the case of pharmacy) to 8:1; and in lower division occupational allied health disciplines to 12:1.	The Board of Higher Education did not support the recommendation.

Recommendation No. 7:

A. Change the calculation used to determine average graduate student SCH's from 24 semester credit hours (36 quarter hours) to 20/30 credit hours; or

B. Change the calculation used to determine full-time equivalent faculty at the graduate level from a ratio of 12:1 to 9:1.

The board supported option B but recommended funds not be included in the 1985-87 budget request to implement the change.

Recommendation No. 8: "Buffer" enrollment estimates, and hence appropriations to the institutions funded through the formula, by averaging enrollment increases or decreases over a three-year period.

The Board of Higher Education approved which resulted in the 1985-87 budget requests being reduced by $217,876 and 3.2 faculty to recognize projected reduced enrollments at NDSU and Minot State College.

Instruction and Academic Support

Recommendation No. 9: Incremental funding be continued for salary and wages and operating expenses in these areas. Additional support personnel should be provided to assist faculty in meeting increased workloads.

The Board of Higher Education approved and recommended an additional $1,377,178 and 31 positions be included in 1985-87 budget requests.

Recommendation No. 10: The State Board of Higher Education develop a plan for the next three bienniums for ensuring North Dakota's library acquisitions, interlibrary access, and library automation progress at the same rate as comparable institutions within the region. The first phase of the plan should be included in the 1985-87 biennial budget request.

The Board of Higher Education approved and recommended an additional $317,155, or eight percent of institutional library acquisition allocations be included in the 1985-87 budget requests.

Recommendation No. 11: A separate appropriation of .5 percent of instructional salaries be earmarked for instructional development in the institutions for each year of the 1985-87 biennium. Percentage should increase to one percent during the 1987-89 biennium and then be reviewed for developing budget requests for the 1989-91 biennium.

The Board of Higher Education approved and recommended $508,655 be included in 1985-87 budget requests.

Recommendation No. 12: The method used for conducting equipment inventories for all institutions should be altered to differentiate between types of equipment.

The Board of Higher Education approved.

Recommendation No. 13: Retain the practice of individually evaluating the equipment requests for new programs and other special situations.

The Board of Higher Education approved.

Recommendation No. 14: Examine the feasibility and cost effectiveness of leasing certain types of equipment instead of purchasing it. Also examine the feasibility of "pooling" equipment acquisitions from all of the institutions to obtain more favorable lease rates because of larger volume.

The Board of Higher Education approved.

Recommendation No. 15: Accelerate the equipment replacement cycle from the present 18-year cycle to a 16-year cycle for the 1985-87 biennium and a 14-year cycle for the 1987-89 biennium or to a 16-year cycle for the first year of the 1985-87 biennium and a 14-year cycle for the second year of the 1985-87 biennium.

The Board of Higher Education approved and recommended $1,686,214 be included in the 1985-87 budget requests to provide funds for recommendations 12, 13 and 15, including funding equipment replacement cycles as follows:

Equipment Type	Replacement Cycle
Instructional and research equipment	8 years
Passenger vehicles	6 years
All other vehicles	18 years

Recommendation No. 16: Consider special equipment surfunds (dollars in addition to the formula base) in the next biennium, and additional bienniums as justified, to compensate for identified special needs.

The Board of Higher Education approved but recommended funds not be included in 1985-87 budget requests.

Computers

Recommendation No. 17: The Computer Task Force recommended funding be increased to $26,609,597 for the 1985-87 biennium. The recommendation included $20.8 million for the higher education computer network services, $1.6 million for an institutional mission supplement, $1.4 million for an institutional differences supplement, and $2.7 million for unfunded services.

The Board of Higher Education reduced the requested $9.4 million computer enhancements to provide a total computer budget request of $20,518,700 for the 1985-87 biennium. The recommended funding includes resources for new institutional and 20.0 network positions — $900,580; the institutional mission supplements for computer equipment — $1,415,000; and funding for 28.75 network positions which benefit all institutions but are currently funded by local funds at NDSU and UND — $941,737.

Facilities Maintenance

Recommendation No. 18: Utilities should continue to be funded on an incremental basis.

The Board of Higher Education approved.

Recommendation No. 19: Physical plant appropriations should utilize a formula approach. It is recommended that a policy be adopted to implement the "North Dakota" formula and that institutions currently below the minimum level of the formula be moved to that level in a phased approach over the next two bienniums.

The Board of Higher Education approved and recommended the "North Dakota" formula, which uses factors such as square footage, acres, students, and facility values to calculate a funding level; $4,028,637 and 74.25 positions are included in the 1985-87 budget requests.

Recommendation No. 20: Capital renewal (plant improvements) should continue to be funded on a case-by-case basis consistent with resources available to the state.

The Board of Higher Education divided institutions' plant improvement proposals into five categories — special assessments, utilities, boilers and minor construction projects, capital renewal, and systemwide requests such as handicapped access. They recommended the capital renewal category be funded at one percent per year of the institution's capital investment appraisal. Based on that recommendation, capital renewal requests for the 1985-87 biennium total $6,807,000.

Research

Recommendation No. 21: The state annually appropriate $100,000 to both the universities for direct support of basic and applied research and that $20,000 be appropriated to Minot State College for a similar purpose. In addition, appropriations of $5,000 to $10,000 be made annually to the other institutions for research designed to improve the delivery of instructional services.

The Board of Higher Education approved and recommended $540,000 be included in the 1985-87 budget requests.

Student Services and Institutional Support

Recommendation No. 22: A revised formula approach for funding student services and institutional support should not be implemented at the present time. Instead,both functions should continue to be funded on an incremental basis with specific requests considered by the State Board of Higher Education and the executive and legislative branches.

The Board of Higher Education approved and recommended $710,172 and 20.5 positions be included in the 1985-87 budget requests.

Recommendation No. 23: During the 1985-86 interim, further studies should be conducted of the possibility of combining these two categories into one budget function and establishing minimum funding levels coupled with additional funding as warranted by enrollment which is greater than the minimal level.

The Board of Higher Education approved.

Facilities Adequacy

The facilities adequacy task force concluded the current procedures for evaluating capital construction projects are adequate. The Board of Higher Education and the Budget "A" Committee agreed with that conclusion.

Funding Study Summary

The Board of Higher Education supported all recommendations except No. 6 which would change the student-faculty ratio in health academic disciplines. The 1985-87 Higher Education budget requests for state colleges and universities total $329,051,728 of which $272,570,373 is from the general fund (including funds for Board of Higher Education recommended salary package). This compares to 1983-85 appropriations totaling $212,427,461, of which $159,138,708 was from the general fund. In addition, $21,660,411, of which $9,082,686 is from the general fund, is requested to fund the three community colleges. This compares to 1983-85 appropriations totaling $19,745,400, of which $6,414,812 was from the general fund. The following schedule lists the enhancements included in the higher education budget requests:

Enhancement (Recommendation No.)	Cost	Number of Additional Positions
Proposed salary increase package (Recommendation 2)	$35,338,676	
Additional faculty (Recommendations 3-8)	7,937,034	116.90
Instruction and academic support (Recommendation 9)	1,377,178	31.00
Library acquisitions (Recommendation 10)	317,155	
Instructional development (Recommendation 11)	508,655	
Equipment (Recommendations 12, 13, and 15)	1,686,214	
Computers (Recommendation 17)	3,257,317	48.75
Facilities maintenance — "North Dakota" formula (Recommendation 19)	4,028,637	74.25
Capital renewal (Recommendation 20)	6,807,000	
Research (Recommendation 21)	540,000	
Student services and institutional support (Recommendation 22)	710,172	20.50
New buildings	31,513,397	
Totals	$94,021,435	291.40

Equipment Leasing

The committee received testimony on the need for additional equipment at the institutions of higher education and recommends Senate Bill No. 2048 to allow state agencies and institutions and the State Board of Higher Education to acquire equipment by the use of variable rate demand notes. The bill provides that the Office of Management and Budget may acquire equipment for use by agencies and institutions by either issuing and selling certifications for participation in lease agreements, or the Office of Management and Budget may lease equipment for use by state agencies and institutions. The bill provides that if the Office of Management and Budget issues certifications of participations, the principal and interest would be repaid from equipment lease rentals paid by state agencies and institutions. In addition, the bill provides that if the Office of Management and Budget leases equipment, the lease rental payments would be made from money appropriated for that purpose by the Legislative Assembly.

Testimony

The committee received testimony from the Office of Management and Budget and the Department of Vocational Education on their recommendations for postsecondary education funding.

The Office of Management and Budget stated that while the recommendations in the higher education funding study task force report are desirable, funding for higher education must be considered in relationship to total resources available to the state.

The Department of Vocational Education testified on the equipment needs of the community college vocational education programs. It said the quality of instructional equipment is vital to the success of vocational education in the community colleges and that formulas developed for equipment funding should be sensitive to the community college vocational education needs. In addition, the Department of Vocational Education said vocational education programs should be available throughout the state in the locations where the identified needs are the greatest.

In addition, the committee received testimony from the representatives of the Indian community colleges in North Dakota. The community colleges reported that federal vocational educational funding to the five Indian community colleges will be discontinued as of September 1, 1984. It was reported the impact to the colleges of lost funding will be to possibly eliminate vocational education on the Indian reservations, deny vocational education training to approximately 400 people, and jeopardize the accreditation of the Indian community colleges.

The community colleges informed the committee that a request for $1,484,185 will be made for the 1985-87 biennium for Indian postsecondary vocational education programs at five Indian community colleges. The Department of Vocational Education said if funds for these programs are included in the 1985-87 budget, the Board for Vocational Education would

recommend they be funded in a separate line item in its appropriation bill and should not be funded at the expense of current state vocational education programs.

Appropriation Authority — Expenditure of Carryover Funds

The Emergency Commission during the 1983-85 biennium approved the expenditure of funds in the amount of $411,603 at Minot State College for eight additional faculty; $650,000 at North Dakota State University for 19 additional faculty; $350,000 for an addition to the NDSU Electrical Engineering Building; and $500,000 for 13 additional faculty at the University of North Dakota. These expenditures were from income in excess of estimates resulting from increased enrollments and from carryover funds from the 1981-83 biennium in excess of the amount estimated during the 1983 legislative session.

The 1983-85 appropriations for higher education included the use of estimated carryover funds from the 1981-83 biennium as income. The 1983 Legislative Assembly in Section 4 of House Bill No. 1005 authorized the expenditure of income from increased enrollments at the institutions only by authorization of the Emergency Commission.

The committee, as a result of its concern relating to the authority of the Emergency Commission to approve the expenditure of carryover funds by the institutions of higher education, requested a Legislative Council memorandum on the subject. The memorandum discussed constitutional issues involved with the appropriation process, the relationship between the legislative branch, the Board of Higher Education, and the Emergency Commission, and the necessity for legislative appropriations of carryover funds by institutions under the control of the Board of Higher Education. The memorandum concluded that:

1. The appropriation of state funds is a legislative prerogative, subject only to specific constitutional requirements and exceptions.
2. Legislative power may not be delegated.
3. The constitutional provision which created the State Board of Higher Education includes language which may be read to give the board self-executing appropriation power over certain funds, but the interpretation of this language and other language with respect to the similar issues by the North Dakota Supreme Court does not support such a reading.
4. Although there is precedent for statutory continuing appropriations, to meet a constitutional challenge an appropriation must be the setting apart of a definite sum for a specific purpose.
5. There is considerable question as to just what is appropriated, and what is intended to be appropriated, in language which has been added to appropriation bills for the institutions under the State Board of Higher Education for the last 15 years, and this language appears to be in conflict with provisions of permanent law.

The committee considered and tabled a bill draft that would have prohibited the Emergency Commission from approving the expenditures of funds in excess of amounts appropriated by the Legislative Assembly.

STATE CENTRAL LABORATORY STUDY

House Concurrent Resolution No. 3053 directed a study to determine the feasibility and efficiency of placing all state laboratories in a central laboratory facility, to determine methods which reduce cost that better utilize laboratory space and equipment, and to analyze the building and other costs of such a consolidation. The resolution states that the State Laboratories Department, State Department of Health, Department of Weights and Measures of the Public Service Commission, Highway Department, and State Water Conservation Commission all operate laboratories, most of which function at separate facilities, and the resolution expresses the concern that duplication in facilities, equipment, personnel, and testing exists at the various laboratories. The resolution further states that some laboratories are in need of additional space while others do not fully utilize the space now occupied and that a lack of coordination between the laboratories has resulted in a loss of functional, costs, and personnel efficiency and that consolidation of these laboratories into one facility may require the construction of additional space at the selected central facility.

Governor's Management Task Force

The report of the Governor's Management Task Force issued in August 1982 includes a recommendation that the state centralize laboratories in one organization administered by the State Laboratories Commission. The task force stated that duplication in facilities, equipment, personnel, and testing exists because the State Laboratories Department, State Department of Health, Department of Weights and Measures, Highway Department, State Water Commission, State Toxicologist, State Hospital at Jamestown, and San Haven all operate laboratories at separate facilities.

The task force recommended, to reduce costs and to better utilize space and equipment, a central laboratory facility be established to conduct tests and analyses now performed in separate facilities by the current State Laboratory, the State Water Commission laboratory (housed in the State Laboratory), and the State Department of Health laboratory.

The task force estimated that an additional 4,000 square feet of space adjoining the current State Laboratory facility would be required with a one-time estimated cost of $400,000. The task force estimated annual savings in excess of $257,000 as a result of elimination of administrative positions, State Department of Health laboratory rent, and vacant positions at the State Laboratory.

Laboratory Task Force

The committee asked representatives of the State Department of Health, State Laboratory Department, State Water Commission, State Highway Department, and the Weights and Measures Division of the Public Service Commission to form a task force to study current laboratory equipment, usage of laboratory equipment, facility needs, duplication of equipment, costs of current facilities, current personnel, duplication of personnel, and personnel needs of a consolidated laboratory facility.

The Laboratory Task Force determined that a collocation of the State Laboratories Department, State Department of Health laboratory, and the State Water Commission laboratory would be appropriate. This collocation would allow the laboratories to share facilities and equipment and personnel while remaining in their respective agencies.

The task force recognized four advantages of collocation over the existing laboratory system:

1. Utilization of human resources would be improved by the promotion of interchange of expertise between the various laboratories.
2. Preventative maintenance could be contracted out at a lower expense and possibly enhance maintenance by hiring and training an individual to be responsible for maintenance of all laboratory equipment.
3. Professional and technical staff development could be shared and by sharing enhanced, including the sharing of training facilities as well as technical expertise.
4. Consumer questions would be eased as to the appropriate testing agency and its location. Collocation would eliminate confusion that occasionally occurs with patrons as to where certain samples should be taken.

In addition the task force recommended establishment of a laboratory planning and service committee to ensure interagency cooperation, compatibility of laboratory policies, and maximum utilization of resources.

In addition, the task force concluded that all state agencies requiring laboratory services should utilize state-owned and operated laboratories whenever practical. It recommended the Highway Department laboratory and the laboratory facility of the Department of Weights and Measures of the Public Service Commission not be collocated because the facilities are adequate and do not generally duplicate other state laboratories.

The task force reviewed but did not endorse the recommendations made to the State Department of Health by the Center for Disease Control regarding the construction of a new public health laboratory. The task force recommended that if the Legislative Assembly funds a new public health laboratory, it be constructed in east Bismarck near the present State Laboratories Department facility and should be designed to include areas which may be utilized by the three collocated agencies (State Laboratories Department, State Department of Health, and State Water Commission). The common used areas on the collocated facility would include a library, lecture hall, training laboratory, and storage area.

In addition to the recommendations of the Laboratory Task Force, the State Department of Health recommended two additional options:

1. No change to the current laboratory situation.
2. A consolidation of laboratory functions.

The department said Option 1 would not require additional funds during the 1985-87 biennium but would not meet the State Department of Health's growing need for space. Option 2 would consolidate all laboratories under the State Department of Health.

In addition, the State Department of Health presented several alternatives for a new laboratory facility, ranging from a cost of $1.9 million, providing a 24,400 square foot facility, to a cost of $3.3 million, providing for a 30,000 square foot facility. They said a $500,000 grant from the United States Enivronmental Protection Agency would be available to construct a training facility for waste water treatment plant operators.

North Dakota's Attorney General testified regarding the laboratory needs of the State Crime Bureau. He said currently the State Crime laboratory is located in the State Laboratories building with insufficient space and security. He suggested the State Crime laboratory should either be separate from other laboratory facilities to ensure security of testing materials or be provided the required space and security at its current location.

The committee toured the facilities of the State Department of Health laboratory, State Laboratories, State Water Commission laboratory, Weights and Measures laboratory, and State Highway Department laboratory.

Recommendation

The committee recommends that if an additional laboratory facility is constructed in Bismarck, it should be constructed near the State Laboratories Department to allow for collocation of the State Department of Health laboratory, State Laboratory, and State Water Commission laboratory.

STUDY OF STATE FACILITIES

Background

House Concurrent Resolution No. 3067 directed a study of the possible uses of existing state facilities and the needs of the state with emphasis on establishment of priorities, to establish the highest and best use of state facilities.

Previous Studies

The 1975-76 interim Budget "C" Committee studied state agency space needs in the Bismarck area and the need for additional buildings at the state's colleges and universities, their priority, and how to finance them. The committee developed suggested guidelines and procedures for a statewide capital construction budget.

Those guidelines included:

1. The executive budget include a section on major capital construction.
2. The capital construction budget include recommended general fund appropriations as well as any special fund appropriations for a two-year period.
3. The executive budget office advise the legislature of those requests for capital construction not included in the executive recommendation.
4. Agencies and institutions are to advise the executive budget office and the legislature of long-range capital construction plans beyond a two-year biennial period.

The committee was informed by the Office of Management and Budget that the guidelines developed by the 1975-76 interim Budget "C" Committee are considered by OMB in the development of the executive budget.

Revolving Fund for Prepayment of Consulting and Planning Fees for Capital Improvements

The committee reviewed the revolving fund which makes moneys available for schematic designs and cost estimates relating to proposed new capital improvements and major remodeling of existing state facilities. State agencies, institutions, and departments must submit a written request for funds for capital improvement projects with the Director of the Office of Management and Budget who shall file the request with and present his recommendations to the Budget Section. Funds advanced are to be repaid to the preliminary planning revolving fund as moneys become available through legislative appropriation or

other sources for the project. The 1975 Legislative Assembly appropriated $200,000 to the preliminary planning revolving fund and currently the fund has a balance of $108,411. There has been no activity in the fund during the 1981-83 and 1983-85 bienniums. Committee members suggested in the future capital improvement requests should indicate if the institution had used moneys from this fund and if the request includes moneys to repay the fund.

Recommendations

The committee's study in this area was limited due to the committee's concentrated efforts in other study areas and therefore the committee makes no recommendations for changes to the current procedure for financing statewide capital construction projects or for alternate uses of existing facilities.

BUDGET "B" COMMITTEE

The Budget "B" Committee was assigned two study resolutions. House Concurrent Resolution No. 3070 directed a study of the investment powers of the State Investment Board and the investment funds of the Public Employees Retirement System. Senate Concurrent Resolution No. 4050 directed a study of the investment, lending, and bonding programs of state agencies.

Committee members were Representatives Corliss Mushik (Chairman), Eugene P. Boyle, Aloha Eagles, Walter C. Erdman, Dean K. Horgan, Harley R. Kingsbury, Roger A. Koski, William E. Kretschmar, Robert W. Martinson, Donna Nalewaja, Verdine D. Rice, and Wade Williams; and Senators Clayton A. Lodoen, Joseph A. Satrom, and Jerome L. Walsh. Senator Stella H. Fritzell, prior to her death in April 1984, served as vice chairman of the committee.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

STUDY OF THE INVESTMENT POWERS OF THE STATE INVESTMENT BOARD AND THE PUBLIC EMPLOYEES RETIREMENT SYSTEM

Background

House Concurrent Resolution No. 3070 calls for a study to determine whether the best return is being received on the state's investments and to investigate possible investment alternatives available within the state.

The State Investment Board was created by the 1963 Legislative Assembly and consists of the Governor, State Treasurer, Commissioner of University and School Lands, chairman of the Workmen's Compensation Bureau, and Commissioner of Insurance.

The following schedule presents the funds under State Investment Board control, except for the Highway Patrol Retirement and Public Employees Retirement funds which are managed by the Public Employees Retirement Board. Also included are the fund's investment balances, collections, payments, weighted average of invested assets, and rate of returns for the fiscal year ended June 30, 1984.

	Teachers' Fund For Retirement	Workmen's Compensation Bureau	State Bonding Fund	State Fire and Tornado Fund	Soldiers' Home Improvement Fund	Highway Patrol Retirement Fund 1/	PERS 1/	Total All Investments
Investment Balance July 1, 1983	$173,165,757	$156,867,031	$8,117,601	$21,276,966	$163,869	$4,553,637	$113,130,555	$477,275,416
Interest earned on investments	18,552,982	18,942,402	806,006	2,082,275	13,515	417,409	9,085,079	49,899,668
Net gain or (loss) on sale of investments	(335,639)		(116,604)	8,015		(203,680)	2,585,784	1,937,876
Management fees	(209,346)	(122,291)						(331,637)
Net Income From Investments	$18,007,997	$18,820,111	$689,402	$2,090,290	$13,515	$213,729	$11,670,863	$51,505,907
Collections	24,541,499	28,388,626	4,910	916,720	67,732	213,797	9,868,823	64,002,107
Payments	(12,711,419)	(28,696,847)	(5,542)	(882,045)	(27,546)	(61,211)		(42,384,610)
Operating expenses	(492,823)	(1,845,260)	(22,121)	(86,357)	(59,807)			(2,506,368)
Transfers			(600,000)	(1,900,000)				(2,500,000)
Difference between collections and payments, operating expenses, and transfers	$11,337,257	$(2,153,481)	$(622,753)	$(1,951,682)	$(19,621)	$152,586	$9,868,823	$16,611,129
Investments Balance – June 30, 1984	$202,511,011	$173,533,661	$8,184,250	$21,415,574	$157,763	$4,919,952	$134,670,241	$545,392,452
Weighted Average Invested Assets for the Fiscal Year Ended June 30, 1984	$187,838,384	$164,537,156	$8,150,192	$22,648,404	$130,600	$4,718,187	$121,165,363	$509,188,286
Rate of Return on Average Investment 2/	9.59%	11.44%	8.46%	9.23%	10.4%	4.53%	9.63%	10.12%

1/ The Public Employees Retirement System Board assumed control of investing the Highway Patrol retirement fund's moneys December 1, 1983. Moneys from the two retirement funds are pooled and invested with Northern Trust Company of Chicago, Illinois. The information regarding the Highway Patrol and Public Employees Retirement System funds' amounts contained in this schedule is subject to final confirmation with Callan and Associates.

2/ The rate of return on investments is based on actual income earned on investments and actual gains and losses on sale of investments and are not based upon market value changes.

Separate accounts are maintained for each fund. The various funds' investments are not commingled, but securities belonging to one or more of the funds may be purchased, sold, or exchanged as part of a single transaction.

The State Investment Board legal investments are described in North Dakota Century Code Section 21-10-07. They are securities that are a direct obligation of the United States or any of the states, or qualifying corporate bonds, notes, or debentures.

The 1965 Legislative Assembly created the Public Employees Retirement Board to manage the Public Employees Retirement System and more recently provided that it also manage the Highway Patrolmen's Retirement System fund. The board consists of eight members. The chairman is appointed by the Governor; one member is appointed by the Attorney General from the Attorney General's staff; three members are elected by the membership of the system; and the State Auditor, State Health Officer, and Commissioner of Banking and Financial Institutions are ex officio nonvoting members.

The board may not invest moneys of the system, but it selects the funding agents to hold and invest the

moneys. The funding agents' primary goal is money management. Since the board is not by statute restricted to certain types of investments, it sets the policies regarding the nature of fund investments.

Structure of the State Investment Board

The committee heard testimony from the State Commissioner of University and School Lands regarding the State Investment Board. The commissioner proposed for consideration the following changes:

1. The State Investment Board members consist of the following:
   a. The chairman of the Teachers' Fund for Retirement.
   b. The chairman of the Workmen's Compensation Bureau.
   c. The commissioner of the Board of University and School Lands.
   d. The commissioner of the Board of Higher Education.
   e. The administrator of the Bank of North Dakota's investments and trusts.
   f. The director of the Office of Management and Budget.
   g. Two persons from the private sector experienced in investments appointed by the Governor for four-year terms.
2. The board employ an investment counselor having expertise in the field of investments and fiduciary concepts.
3. The following funds be placed under the board and the investment counselor:
   a. State bonding fund.
   b. State fire and tornado fund.
   c. Trust funds under the control of the Board of University and School Lands.
   d. Teachers' Fund for Retirement.
   e. Public Employees Retirement fund.
   f. Workmen's compensation fund.
   g. State general fund.
   h. Investment funds of the Bank of North Dakota.
   i. State Mill and Elevator funds.
   j. State construction fund.
   k. OASIS fund.
   l. Higher education bond sinking funds.
4. The Bank of North Dakota be used as custodian for securities and as the purchasing agent.
5. A periodic review be required of the board by an outside firm to determine the performance of the board and its counselor.
6. The State Auditor be required to conduct an internal audit function to review investment transactions.
7. Monthly reports be required on all transactions for the Investment Board, quarterly reports for the Legislative Council's Budget Section, and biennial reports for the full Legislative Assembly.
8. State Investment Board expenses be paid pursuant to an appropriation from a fund which receives moneys from each investment fund in the proportion of the amount in each account to the total amount of all funds.

The Public Employees Retirement System (PERS) and Teachers' Fund for Retirement testified against the proposed changes. PERS does not want to be under State Investment Board control since funds under the board's control cannot make equity investments. The State Treasurer testified against the proposed changes. He believes that PERS should remain a separate board due to its outstanding performance. The Workmen's Compensation Bureau also opposed the changes. The bureau is satisfied with the State Investment Board's current performance and believes no changes are necessary. Further reasons for opposition to the proposal included:

1. The State Investment Board's legal investments are too restrictive.
2. The State Investment Board does not hire outside money managers.
3. The State Investment Board does not have written policies on investment goals and objectives.
4. The State Investment Board does not prepare annual investment measurement service reports.

The committee heard testimony from private bank trust officers regarding the state's investing of retirement and other large funds. The officers' suggestions for State Investment Board improvements included improvement of or implementing the following:

1. Determine asset allocation.
2. Select a trustee.
3. Establish portfolio diversification.
4. Hire professional money manager(s).
5. Have ongoing monitoring of investments' market values.

The committee also heard testimony from Mr. Stephen P. Myers, South Dakota State Investment Officer. He recommended the State Investment Board be composed of individuals from the private sector who have investment experience. The board members should be appointed by elected officials. He also recommended the use of outside consultants to review the investment performance.

The committee reviewed the structure of Montana, South Dakota, Nebraska, Iowa, and Kentucky investment boards. In Montana, Nebraska, Iowa, and Kentucky state employees make investments. In South Dakota both state employees and outside money managers make investments. Montana and South Dakota have members of the investment board who are experienced in the field of investing. Iowa utilizes the State Treasurer's office to make investments rather than have a State Investment Board. Montana, South Dakota, Nebraska, and Kentucky all hire investment officers.

Recommendations

The committee recommends Senate Bill No. 2049 to include as members of the State Investment Board the executive secretary of the Teachers' Fund for Retirement and two new members from the private sector experienced in the field of investments.

The committee tabled a bill draft to include under the State Investment Board's control the following funds: public employees retirement fund; state general fund; old age survivor's insurance trust fund; trust funds under the control of the Board of University and School Lands; funds held, supervised, or managed by the Bank of North Dakota; State Board of Higher Education revenue-producing building bond and refunding bond payment funds; and funds of the State Mill and Elevator available for investment.

One reason for the committee's tabling the bill draft was to allow PERS to remain as a separate board. Another reason was that several of the departments whose funds are under the board's control are

satisfied with the present board structure. The committee also opposed the State Investment Board investment of the state general fund preferring that such moneys continue to be handled by the Bank of North Dakota.

Investment Goals and Objectives

The State Investment Board does not have written policies on investment goals and objectives. The Public Employees Retirement System and the Teachers' Fund for Retirement have established policies on investment goals and objectives. The committee considered the following as requirements for the development of policies regarding investment goals and objectives:

1. The definition and assignment of duties and responsibilities to advisory services and persons employed by the board.
2. Acceptable rates of return, liquidity, and levels of risk.
3. Long-range asset allocation goals.
4. Guidelines for the selection and redemption of investments.
5. Investment diversification, investment quality, qualification of advisory services, and amounts to be invested by advisory services.
6. The type of reports and procedures to be used in evaluating performance.

Recommendation

The committee recommends Senate Bill No. 2050 to require the funds under the control of the State Investment Board to establish policies on investment goals and objectives. Policies regarding investment goals and objectives are beneficial because they formalize the decisionmaking process and should result in decisions that maximize returns at the lowest level of risk. They also when followed give assurance that funds are being invested in accordance with predetermined approved goals and objectives.

Investment Reporting

The committee was advised that annual reports on investment results are beneficial. The committee considered the following requirements for investment measurement service reports:

1. A list of the advisory services managing investments for the board.
2. A list of investments including the cost and market value, compared to the previous reporting period, of each fund managed by each advisory service.
3. Earnings, percentage earned, and change in market value of each fund's investments.
4. Comparison of the performance of each fund managed by each advisory service to other funds under the board's control and to market indicators. The market indicators to be used are the Standard and Poor's 500, Dow Jones Industrials, New York Stock Exchange, Salomon Bond Index, Lehman Kuhn Loeb Government/Corporation, and treasury bills.

Recommendation

The committee recommends Senate Bill No. 2050 to require the funds under the control of the State Investment Board and PERS to prepare uniform annual investment performance reports. The committee believes the reports would be beneficial because they:

1. Provide professional knowledge and experience.
2. Provide an independent, objective third-party viewpoint.
3. Present relevant alternatives and solutions to problems.
4. Gather, organize, and evaluate information.
5. Include statistics comparing performances.

Legal Investments

The State Investment Board funds are all in investments with fixed rates of return. The public employees retirement fund is invested equally in equity and investments with fixed rates of return. Up to 20 percent of the teachers' retirement fund moneys may be in equity investments.

The committee heard testimony that investments in common or preferred stocks offer opportunities for greater rates of return than fixed income investments. The committee was also presented reports detailing the performance of equity and fixed income investments.

The following is the investment performance for the last 10 years to June 30, 1984, of the funds under the control of PERS. The performance of equity, fixed income, and total investments is included:

Periods Ended June 30, 1984	Last 1/2 Year	Last Year	Last Two Years	Last Three Years	Last 10 Years
Equities	(10.34)%	(13.38)%	21.72%	7.03%	8.28%
Fixed income	(0.12)	2.81	15.66	14.40	6.76
Total fund	(4.77)	(5.10)	18.28	10.98	8.21
Market Indicators					
Standard & Poor's 500 (equity)	(4.89)	(4.64)	23.87	10.78	11.26
Dow Jones Industrials (equity)	(7.75)	(2.77)	24.07	10.97	9.28
New York Stock Exchange (equity)	(4.90)	(5.00)	22.99	9.96	12.09
FRMS Universe (equity)	(6.14)	(7.34)	23.28	9.48	18.64
Salomon Bond Index (fixed income)	(5.89)	(6.27)	15.53	13.20	6.72
Lehman Kuhn Loeb Govt/ Corp (fixed income)	(1.21)	1.76	14.65	14.20	8.49
Treasury bills (fixed income)	4.92	9.82	9.59	11.20	9.28
Consumer Price Index (general price level)	1.56	3.03	2.73	4.09	7.62
Capital International Index (equity)	2.01	11.52	21.40	7.84	11.81

Recommendation

The committee recommends Senate Bill No. 2051 to include as legal investments for funds under the control of the State Investment Board common or preferred stocks of any corporation organized under the laws of any state. Not more than 20 percent of the assets of each fund may be invested in common or preferred stocks. The committee also recommends Senate Bill No. 2052 to allow the Teachers' Fund for Retirement to make investments in the same manner as would a prudent person of discretion and intelligence.

The committee recommends allowing investments in common or preferred stocks because they offer opportunities for greater rates of return than fixed income investments. Investing in common and preferred stocks will also achieve portfolio diversification which is attractive because of changing investment cycles.

Other Committee Action

The committee tabled a bill draft to allow funds under the management of the State Investment Board to be commingled. The bill draft was tabled because representatives of several of the funds testified that, due to their different nature, they preferred to remain separate. The committee was also advised that securities belonging to one or more of the funds are purchased, sold, or exchanged as part of a single transaction.

Future Study

The committee recommends Senate Concurrent Resolution No. 4001 to direct the Legislative Council to continue the study of the investment powers and performance of the State Investment Board and funds of the Public Employees Retirement System. Even though the committee has conducted an in-depth study resulting in recommendations for improvements in the state's investment of funds, a continued study is recommended to monitor the implementation of these recommendations and to determine whether further improvements are possible.

STUDY OF THE INVESTMENT, LENDING, AND BONDING PROGRAMS OF THE INDUSTRIAL COMMISSION OF NORTH DAKOTA, BANK OF NORTH DAKOTA, STATE DEPARTMENT OF AGRICULTURE, ECONOMIC DEVELOPMENT COMMISSION, BOARD OF UNIVERSITY AND SCHOOL LANDS, STATE INVESTMENT BOARD, AND OTHER APPROPRIATE AGENCIES

Senate Concurrent Resolution No. 4050 stated that the study is necessary since developing and expanding private businesses are encountering difficulty in obtaining necessary capital because of the present poor economy, and it is possible state investment and lending programs could be designed to provide financial assistance to private businesses.

The Industrial Commission consists of the Governor, Attorney General, and Commissioner of Agriculture. The commission was created to conduct and manage, on behalf of the state of North Dakota, certain utilities, industries, enterprises including housing finance programs, and business projects established by law. The commission is authorized to procure the necessary funds for the utilities, industries, enterprises, and business projects under its control by negotiating the bonds of the state as may be provided by law. The commission is authorized and directed to acquire and hold in separate trust all unpaid United States government guaranteed or reinsured student loans and North Dakota guaranteed student loans belonging to the state of North Dakota.

The Bank of North Dakota was established in 1919 to encourage and promote agriculture, commerce, and industry in this state. The Industrial Commission operates, manages, and controls the Bank.

The Board of University and School Lands consists of the Governor, Secretary of State, State Auditor, Attorney General, and Superintendent of Public Instruction. The board manages the lands set aside in the Enabling Act to support the common schools and certain charitable and educational institutions.

The committee expressed interest in receiving information on the state's outstanding debt, full faith and credit pledged on outstanding debt, and moral obligation on the outstanding debt. The following schedule is the state of North Dakota outstanding debt as of June 30, 1983 and 1984:

STATE OF NORTH DAKOTA OUTSTANDING DEBT
AS OF JUNE 30, 1983 AND 1984
BONDS WITH THE FULL FAITH AND CREDIT OF THE STATE PLEDGED

NDCC Chapter Reference	Bond Issue	Amount of Bonds Issued and Outstanding as of 6/30/83			Cash and Investment Balance of Bond Sinking Fund as of 6/30/83	Amount of Bonds Issued and Outstanding as of 6/30/84			Cash and Investment Balance of Bond Sinking Fund as of 6/30/84	Date Last Bonds will be Retired	Is the Full Faith and Credit of the State Pledged?
		Principal	Accrued Interest	Total		Principal	Accrued Interest	Total			
54-17.1	Vietnam Conflict Adjusted Compensation Series										Yes
	1971 Issue	$5,540,000	$36,537	$5,576,537		$4,270,000	$28,493	$4,298,493		Nov. 1, 1986	
	1973 Issue	1,425,000	12,112	1,437,112		1,075,000	9,138	1,084,138		Nov. 1, 1986	
	Total – Vietnam Conflict Adjusted Compensation Series	$6,965,000	$48,649	$7,013,649	$15,839,674	$5,345,000	$37,631	$5,382,631	$5,694,746		
54-30	1982 Real Estate Series A	$35,000,000	$1,892,976	$36,892,976	$1,955,215	$34,625,000	$ -0-	$34,625,000	$39,189,900	July 1, 1997	Yes
	Total – General Obligation Bonds	$41,965,000	$1,941,625	$43,906,625	$17,794,889	$39,970,000	$37,631	$40,007,631	$44,884,646		
BONDS WITHOUT THE FULL FAITH AND CREDIT OF THE STATE PLEDGED											
15-55	Higher Education Revenue Bonds	$56,244,000	$ -0-	$56,244,000	$16,924,237	$60,158,000	$ -0-	$60,158,000	$13,093,000	Various	No
6-09.4	Municipal Bond Bank										No
	1977-A Series	$ 9,120,000	$ 34,058	$ 9,154,058	$ 70,005	$8,340,000	$31,328	$8,371,328	$77,691 1/	June 1, 1997	
	1979-A Series	14,315,000	439,376	14,754,376	926,801	13,770,000	-0-	13,770,000	973,133 2/	July 1, 2000	
	1983-A Series	11,600,000	164,284	11,764,284	47,390	10,340,000	146,296	10,486,296	7,810 3/	May 1, 2002	
	Total – Municipal Bond Bank Series	$35,035,000	$637,718	$35,672,718	$1,044,196	$32,450,000	$177,624	$32,627,624	$1,058,634		
54-17	Housing Revenue Bonds										
	The 400 Project Construction Notes	$2,019,500	$38,707	$2,058,207		$ -0-	$ -0-	$ -0-	$ -0-	May 1, 1984	
	The 400 Project Bonds	2,095,000	105,044	2,200,044		2,128,838	61,164	2,190,002	144,286	Oct. 1, 2005	
	Total 400 Project	$4,114,500	$143,751	$4,258,251	$2,352,729	$2,128,838	$61,164	$2,190,002	$144,286		
	1982 Multifamily Bonds	$11,365,000	$174,545	$11,539,545	$1,375,162	$11,365,000	$174,545	$11,539,545	$1,401,536	Nov. 1, 1990	
	1982-A Single-Family Bonds	28,940,000 4/	1,778,088	30,718,088	24,322,136 4/	6,670,000	409,704	7,079,704	1,312,130	July 1, 1998	
	1983-A Single-Family Bonds	29,945,000	236,533	30,181,533	28,865,807	29,945,000	1,468,135	31,413,135	7,613,222	July 1, 2014	
	1983-B Single-Family Bonds					58,375,000	2,993,281	61,368,281	32,167,908	July 1, 2014	No
	1983-C Single-Family Bonds					31,670,000	1,552,118	33,222,118	26,763,157	July 1, 2015	
	Total – Housing Revenue Bonds	$74,364,500	$2,332,917	$76,697,417	$56,915,834	$140,153,838	$6,658,947	$146,812,785	$69,402,239		
4-36	Agricultural Development Bonds										No
	Serial Bonds	$12,000,000	$206,400	$12,206,400	$206,400	$12,000,000	$412,800	$12,412,800	$412,800	Jan. 1, 1989	
	Term Bonds	6,000,000	120,000	6,120,000	120,000	6,000,000	240,000	6,240,000	240,000	Jan. 1, 1993	
	Total – Agricultural Development Bonds	$18,000,000	$326,400	$18,326,400	$326,400	$18,000,000	$652,800	$18,652,800	$652,800		
54-17	Student Loan Revenue Bonds										No
	1979 Series A	$50,295,000	$ -0-	$50,295,000	$ 5/	$41,370,000	$ -0-	$41,370,000	$15,610,694	July 1, 1996	
	1981 Series A	94,520,000	3,741,417	98,261,417	7,283,651	94,520,000	3,741,417	98,261,417	25,025,623	Feb. 1, 1985	
	Total – Student Loan Revenue Bonds	$144,815,000	$3,741,417	$148,556,417	$7,283,656	$135,890,000	$3,741,417	$139,631,417	$40,536,317		
6-09	Bank of North Dakota Collateralized Bonds	$35,158,000	$271,010	$35,429,010	$ -0- 6/	$30,108,000	$232,083	$30,340,083	$ -0- 6/	Dec. 1, 1993	No
	Total – Bonds Without the Full Faith and Credit Pledged	$363,616,500	$7,309,462	$370,925,962	$82,494,323	$416,759,838	$11,462,871	$428,222,709	$124,842,990		
	TOTAL – ALL BOND ISSUES	$405,581,500	$9,251,087	$414,832,587	$100,289,212	$456,729,838	$11,500,502	$468,230,340	$169,727,636		

1/ The June 30, 1984, balance of the reserve funds for the 1977-Series A bonds was $1,151,402.
2/ The June 30, 1984, balances of the reserve and special reserve funds for the 1979-Series A bonds were $1,805,000 and $370,000 respectively.
3/ The June 30, 1984, balances of the reserve and special reserve funds for the 1983-Series A bonds were $1,505,706 and $100,000, respectively.
4/ $21,190,000 of the 1982A single-family housing revenue bonds were called on July 1, 1983, and $1,080,000 of the bonds were called in January 1984.
5/ Bonds due on July 1, 1983, were paid on June 30, 1983.
6/ The bond principal and interest payments are made from the general operations of the Bank, rather than from a sinking fund.

Promotion of North Dakota Agriculture and Industrial Development

The North Dakota Economic Development Commission circulated a questionnaire to 14,000 North Dakota small businesses. The questionnaire was designed to identify areas where the Economic Development Commission could assist in the financing of small businesses. Questionnaire responses indicate interest rates to be the most significant negative factor influencing North Dakota small businesses and that 63 percent of the small businesses were originally financed by personal equity. Sixty percent of the respondents thought the state should provide more financial assistance to small businesses.

State agencies involved in the promotion of agriculture include the Bank of North Dakota, Department of Agriculture, Potato Council, Dairy Promotion Commission, Sunflower Council, Beef Commission, Mill and Elevator, Edible Bean Council, and Wheat Commission. The Milk Stabilization Board is mostly involved with regulatory matters and is only indirectly involved in promotional efforts. State agencies engaged in the promotion of industrial development include the Bank of North Dakota, Agricultural Products Utilization Commission, and Economic Development Commission.

The committee heard testimony describing the North Dakota State Development Credit Corporation (NDSDCC). The NDSDCC is a private, profit corporation that was formed in 1973 to promote business and industry in the state. The NDSDCC is a statewide organization authorized to issue loans under a Small Business Administration loan guarantee program. Of the 175 banks in the state, 125 are members of NDSDCC. The NDSDCC president is proposing a private corporation called North Dakota Equity, Inc., which would provide venture capital to small businesses in North Dakota. The committee was advised that there are a number of the state's small businesses in need of venture capital. Traditional financing is not available to these businesses and unless financing is received they could become insolvent.

Recommendation

The committee recommends the Legislative Council support legislation introduced in the 1985 Legislative Assembly authorizing the creation of venture capital corporations to provide venture capital to developing business in the state. The investors in venture capital corporations should receive credit on their North Dakota income tax return for investments in venture capital corporations to encourage them to make such investments.

North Dakota Housing Finance Agency

An initiated measure approved on November 4, 1980, provided for the establishment of the Housing Finance Agency. The agency issues bonds to make home loans available. Federal regulations require the borrower to be a first time home buyer and to have an annual income of not over $35,000. The state may issue up to $200 million in revenue bonds each year.

Vietnam Bond Sinking Fund

The 1971 Legislative Assembly authorized the issuance of up to $15 million of general obligation bonds to provide funds for the payment of adjusted compensation to North Dakota Vietnam veterans and the resulting administrative expenses. The 1973 Legislative Assembly approved the issuance of an additional $4 million of bonds. The Vietnam bond sinking fund was established to make payments of the bond principal and interest. An income surtax was authorized by the 1971 Legislative Assembly to provide funds for the bond payments. This surtax was repealed by the 1975 Legislative Assembly and in lieu thereof a general fund appropriation of $17 million was approved for transfer to the sinking fund.

The Bank of North Dakota invested $21 million from the Vietnam bond sinking fund in a Federal Home Loan Mortgage Corporation note in July 1975 at 7.75 percent interest. In November 1983 the Bank purchased the note from the sinking fund, and the proceeds were placed in an account at 7.75 percent interest. At the date of purchase the par value of the note was $12,679,180, and the discounted amount paid by the Bank was $11,746,036. Under North Dakota Century Code Section 54-17.1-08, upon retirement of all bonds and payment of interest, any remaining balance in the sinking fund is to be transferred by the State Treasurer to the state general fund.

Real Estate Series A Bond Issues

The purpose of the bond issues is to replace funds loaned for farm real estate by the Bank of North Dakota. Bonds were issued in 1982 and 1984 in the amounts of $35,000,000 and $62,335,000, respectively. The bonds are general obligation bonds and the full faith and credit of the state is pledged for principal and interest payments. Bond principal and interest payments will be made from a debt service fund in the state treasury. Payments received from real estate loans made by the Bank of North Dakota will be deposited in this fund. If moneys in the debt service fund are not sufficient to make the principal and interest payments, the State Board of Equalization is to levy an ad valorem real estate tax on all taxable real property in the state.

The purpose of the 1984 bond issue proceeds is to pay off the 1982 series and to further replace funds loaned for farm real estate during the period from February 1972 to January 1983 by the Bank of North Dakota. These loans are supported by first mortgages on real estate.

Notification to General Public of North Dakota Bond Issues

Information on North Dakota state agency and institution bond issues is generally distributed by the brokers trying to sell the bonds. The brokers that are selling the bonds advertise the bond issue through a brokerage house. North Dakota state agency and institution bond issues handled by east coast underwriters sometimes are not available to brokers in North Dakota, consequently North Dakota investors may not be aware of the bond issues.

Committee Action

The committee tabled a bill draft requiring the North Dakota State Industrial Commission to publish notice 30 days before the initial sale of bonds issued by the commission. Representatives of the Bank of North Dakota and the State Industrial Commission testified that they do not on a regular basis contact the press to inform residents of North Dakota on specific bond issues; however, they opposed the bill draft requiring advance notice since the amounts and interest rates of the bonds are not known 30 days prior

to issuance. They indicated that to the extent possible information about bond issues will be released.

Outstanding Debt Reporting

The state's outstanding debt is not reported in a single document. In the State Auditor's reports outstanding state debt is disclosed in individual audit reports, performed either by the State Auditor's office or private firms, but no overall summary is prepared. A report on the state's outstanding debt should disclose all the state bond issues and amounts outstanding, and when the full faith and credit of the state is pledged. Disclosure of all state debt would enable state officials to determine if the state is exceeding its bonding capacity.

Recommendation

The committee recommends House Bill No. 1045 to require the State Auditor's office to prepare annually a report identifying all state of North Dakota outstanding bonds and other evidences of indebtedness. The State Auditor is to include in the report the principal and accrued interest amounts of each outstanding debt issue. Information that is available in audit reports prepared by private firms may be used when preparing the report.

Other Committee Action

The committee recommends House Bill No. 1046 to repeal obsolete bonding programs The programs repealed are the irrigation development debentures, North Dakota Mill and Elevator bonds, and the North Dakota Mill and Elevator refunding bonds.

BUDGET "C" COMMITTEE

The Budget "C" Committee was assigned two studies. Senate Concurrent Resolution No. 4054 directed a study to determine whether the state, through Medicaid reimbursement, is paying the full and reasonable costs of Medicaid patient-related care in skilled and intermediate care facilities and to determine means to improve the Medicaid reimbursement formula which will provide those facilities with incentives to accomplish efficient management, cost containment, and equal charges to Medicaid and private pay patients. House Concurrent Resolution No. 3083 directed the committee to study the feasibility of requiring residents, spouses, or families of individuals receiving services at state and community facilities to make financial contributions toward the support of those services. The committee was also assigned the responsibility of monitoring the status of major state agency and institution appropriations.

Committee members were Senators Russell T. Thane (Chairman), Thomas Matchie, Jerry Meyer, L. L. Naaden, Rolland W. Redlin, Harvey D. Tallackson, Malcolm S. Tweten, and Frank A. Wenstrom; and Representatives Harley R. Kingsbury, Ruth Meiers, Arthur Melby, Corliss Mushik, Dagne Olsen, Earl R. Pomeroy, Elmer Retzer, and Oscar Solberg.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

STUDY OF THE STATE MEDICAID REIMBURSEMENT FORMULA

Background

There are currently 96 nursing care facilities in North Dakota with approximately 6,800 beds, which breaks down to 4,600 skilled nursing care beds and 2,200 intermediate care beds. Approximately 3,570 of those 6,800 beds or 53 percent are filled by Medicaid clients, 1,900 in skilled beds and 1,670 in intermediate care beds. The North Dakota 1983-85 biennial appropriation for medical assistance clients in skilled and intermediate care facilities was $97.8 million, $33.8 million of which was from the state general fund.

Senate Concurrent Resolution No. 4054 expressed a concern that excessive charges to private pay patients have a discouraging effect on their financial savings and may even encourage some elderly people to divest themselves of their resources to become financially eligible for Medicaid payments if skilled or intermediate care should in the future become necessary. Based on information provided the committee by the Department of Human Services in September 1983, rates charged private pay patients exceeded the rate paid by the state for Medicaid clients at all but eight of the 96 facilities. Private pay rates exceeded state Medicaid rates by more than 10 percent at 39 of the facilities.

Interim Study

The committee early in its study, based on information provided by Legislative Council staff reports and other testimony, identified several problems in the state Medicaid reimbursement formula for Medicaid patient care in nursing care facilities. The identified problems are as follows:

1. The state's current method of reimbursement lacks incentives for nursing care facilities to reduce or contain costs.
2. The untimely Medicaid rate determination often results in nursing care facilities budgeting those rates conservatively resulting in a higher private pay patient rate.
3. The uncertainty faced by nursing care facilities as to which costs will be reimbursed by the state for Medicaid patients contributes to the differential between private patient and Medicaid patient rates.
4. Repeated sales of nursing care facilities at increasing prices results in additional Medicaid reimbursement being paid those providers without any change in quality of care provided.
5. The destruction of discontinued medications in long-term care facilities may result in additional costs to Medicaid patients of $250,000 annually and additional amounts for private pay patients.
6. Nursing care facilities vary in their method of determining charges for ancillary services (services not necessarily required by or provided to all residents, including physical therapy) and miscellaneous supplies which may result in excessive charges to private pay patients.

The committee proceeded in its study and deliberation in the following areas by conducting public hearings; receiving testimony from interested parties; encouraging members of the North Dakota Hospital Association, North Dakota Health Care Association, and North Dakota Department of Human Services to organize a Medicaid Reimbursement Task Force to address the identified problems; and by receiving reports from a select committee formed to study the destruction of discontinued medications.

Prospective Reimbursement System

Cost Containment Incentives

The committee reviewed the state's current reimbursement formula and other states' formulas for cost containment incentives. The committee learned the current Medicaid reimbursement system reimburses nursing care facilities at a rate dependent on actual costs incurred by each facility the previous year as adjusted by projected consumer price index increases. The current reimbursement system does not include incentives to contain or reduce costs. The Medicaid Reimbursement Task Force recommended cost containment incentives be included in the reimbursement formula that will encourage high cost providers to reduce costs and encourage low cost providers to retain or lower their costs.

Rate Determination

Currently the rate to be paid by the state for Medicaid nursing care patients is contingent on an audit of the facilities' previous year's expenditures which generally occurs within nine months after the facilities' previous yearend. This delay in final rate determination results in additional charges to private pay patients because facilities budget the Medicaid reimbursement conservatively. The Medicaid Reimbursement Task Force recommended the state implement a prospective Medicaid reimbursement system by July 1, 1987. The proposed prospective system will allow for the determination of the Medicaid reimbursement rate by the beginning of a facility's fiscal year.

The proposed prospective reimbursement system will establish rates based on budgets developed in

accordance with Department of Human Services' requirements calculated by using historical cost trends with appropriate adjustments for the type of long-term care facility, level of care delivered, and projected economic and other changes. The budgets will include any necessary and justified new programs and other necessary changes within long-term care facilities that affect the cost of future operations. The rates as established will be adjusted to a lower level only if the Department of Human Services determines that information provided by a long-term care facility has been materially or intentionally misstated.

Rate Differential and Reimbursable Costs

The committee received a report early in its study comparing nursing care beds and rates for private pay patients and Medicaid patients in North Dakota. The committee found several facilities in which the reported private pay rate exceeded the state Medicaid rate by a substantial amount. The committee identified several factors contributing to this differential, including the late determination of the state Medicaid rate and the adjustment of that rate by subsequent audit as discussed in the previous section, facilities' needs for working capital and profit to continue operations, and facilities' uncertainty as to which costs are allowable and reimbursable by the state in the Medicaid program.

The committee at its last meeting requested a current report comparing nursing care beds and rates for private pay patients and Medicaid patients in North Dakota be included in this report. The following table entitled "Schedule of Nursing Care Beds and Rates — October 1984" details by facility the number of licensed beds for skilled and intermediate care, compares the reported private daily rate to the state Medicaid rate, gives the current occupancy rates, and indicates if the facility is profit or nonprofit.

SCHEDULE OF NURSING CARE BEDS AND RATES DEPARTMENT OF HUMAN SERVICES OCTOBER 1984

				SKILLED					INTERMEDIATE				
					DAILY RATE					DAILY RATE			
Facility	City	Year End	Non-Profit/ Profit	Licensed Beds	Reported Private	Last State	% Private Over State	Occupancy Percentage	Licensed Beds	Reported Private	Last State	% Private Over State	Occupancy Percentage
Americana Healthcare	Fargo	5/31	P	104	66.00	44.10 D	49.7	93.4		63.50	38.24 D	66.1	
Americana Healthcare	Minot	5/31	P	106	66.00	42.72 D	54.5	91.0		N/A	36.11 D		
Beulah Community Nursing	Beulah	5/31	N	50	55.00	53.63 D	2.6	98.4	20	47.00	40.71 D	15.5	
Good Samaritan L.T.C.	Rugby	3/31	N	74	55.00	54.44 D	1.0	97.5	30	39.50	39.50 D		
Parkside Lutheran Home	Lisbon	10/31	N						40	26.30	24.72 F	6.4	99.0
Rolla Community Hospital	Rolla	9/30	N	26	69.76	69.76 F		89.0	22	65.46	58.97 F	11.0	
St. Aloisius	Harvey	9/30	N	56	57.00	50.41 F	13.1	93.7	60	50.00	42.49 F	17.7	
St. Andrews	Bottineau	9/30	N	26	83.93	68.15 F	23.2	96.0		N/A	59.07 F		
Community Hosp./N.H. Assoc.	Hillsboro	9/30	N	50	48.50	41.16 F	17.8	99.2		N/A	34.89 F		
Valley Memorial Home	Grand Forks	2/28	N	160	73.50	72.35 D	1.6	98.6	100	41.00	37.66 D	8.9	
McIntosh Co. Mem. Hosp.	Ashley	6/30	N						30	45.00	43.00 I	4.7	98.6
Missouri Slope	Bismarck	6/30	N	140	59.00	53.54 D	10.2	99.3	80	54.00	45.66 D	18.3	
St. Vincent's	Bismarck	6/30	N	94	62.00	59.70 D	3.9	99.0		57.00	49.68 D	14.7	
Rest Haven Manor	Cando	6/30	P	74	54.50	48.21 D	13.0	98.9		54.50	41.62 D	30.9	
Carrington Hospital	Carrington	6/30	N	38	63.00	63.00 F		96.0		58.00	57.95 F	0.1	
Golden Acres	Carrington	6/30	P	60	54.50	46.59 D	17.0	97.7		54.50	40.17 D	35.7	
Griggs Co. Nursing Home	Cooperstown	6/30	N	50	48.00	42.98 I	11.7	99.0		N/A	36.47 I		
Lake Region	Devils Lake	6/30	N	104	52.11	48.28 F	7.9	99.0		N/A	39.23 F		
Jacobson Mem. Hosp.	Elgin	6/30	N	25	50.00	50.00 F		94.0		48.00	48.00 F		
Garrison Mem. Hosp.	Garrison	6/30	N						24	52.00	51.39 F	1.2	85.0
Marian Manor	Glen Ullin	6/30	N	86	44.00	42.51 F	3.5	99.6		39.00	34.80 F	12.1	
St. Gerard's	Hankinson	6/30	N	23	50.00	50.00 F		99.3		46.00	43.81 F	5.0	
Tri-County Ret. & N.H.	Hatton	6/30	N	60	36.00	36.00 F		99.7		36.00	30.25 F	19.0	
McVille Friendship Manor	McVille	6/30	P	52	57.00	46.82 D	21.7	97.1		57.00	40.69 D	40.1	
Trinity	Minot	6/30	N	208	62.00	54.17 F	14.5		121	45.00	35.46 F	26.9	
Golden Manor	Steele	6/30	P						42	29.00	28.18 I	2.9	97.8
Strasburg Nursing Home	Strasburg	6/30	N	80	38.00	34.53 F	10.0	95.1		35.00	27.35 F	28.0	
Tioga Comm. N.H.	Tioga	6/30	N	30	48.00	48.00 F		98.3		44.00	44.00 F		
Prairieview Home	Underwood	6/30	P	64	47.00	45.29 F	3.8	99.0		44.00	38.68 F	13.8	
Wishek Home for the Aged	Wishek	6/30	N	95	34.40	32.51 D	5.8	98.0		30.90	27.05 D	14.2	
Aneta Good Samaritan	Aneta	12/31	N						51	36.50	27.62 F	32.2	94.7
Arthur Good Samaritan	Arthur	12/31	N						96	29.50	25.78 F	14.4	98.7
Baptist Home	Bismarck	12/31	N	64	60.00	57.40 D	4.5	93.9		N/A	47.70 D		
Bottineau Good Samaritan	Bottineau	12/31	N						81	40.29	31.11 F	29.5	99.2
Sunset Home, Inc.	Bowman	12/31	N	42	47.00	47.00 D		92.7	20	43.00	42.13 D	2.1	
Pembina Co. Mem. N.H.	Cavalier	12/31	N	60	58.53	55.38 D	5.7	99.6		56.05	46.62 D	20.2	
Crosby Good Samaritan	Crosby	12/31	N						81	30.05	28.32 D	6.1	87.7
Devils Lake Good Samaritan	Devils Lake	12/31	N						80	41.00	32.56 D	25.9	98.6
Dickinson Nursing Center	Dickinson	12/31	P	110	54.00	43.78 D	23.3	98.0	75	44.00	35.95 D	22.4	

SCHEDULE OF NURSING CARE BEDS AND RATES DEPARTMENT OF HUMAN SERVICES OCTOBER 1984

Facility	City	Year End	Non-Profit/ Profit	SKILLED Licensed Beds	SKILLED DAILY RATE Reported Private	SKILLED DAILY RATE Last State *	SKILLED % Private Over State	SKILLED Occupancy Percentage	INTERMEDIATE Licensed Beds	INTERMEDIATE DAILY RATE Reported Private	INTERMEDIATE DAILY RATE Last State *	INTERMEDIATE % Private Over State	INTERMEDIATE Occupancy Percentage
St. Luke's	Dickinson	12/31	N	83	56.00	50.59 D	10.7	99.0		52.00	42.96 D	21.0	
Dunseith Comm. N.H.	Dunseith	12/31	N	40	41.00	39.99 F	2.5			36.25	32.39 F	11.9	80.0
Ellendale Nursing Center	Ellendale	12/31	N	85	49.50	45.86 D	7.9	94.0		38.65	38.00 D	1.7	
Hillcrest Manor, Ltd.	Enderlin	12/31	P						62	33.00	27.82 D	18.6	97.7
Bethany Nursing Home	Fargo	12/31	N	96	65.00	60.17 D	8.0	99.2	96	40.00	37.46 D	6.8	99.6
Elim Home	Fargo	12/31	N	125	44.50	41.15 D	8.1	91.6		44.50	35.01 D	27.1	
Fargo Nursing Home	Fargo	12/31	N	102	58.55	49.68 D	17.9	96.0		N/A	41.79 D		
Villa Maria	Fargo	12/31	P	132	54.00	48.98 D	10.2	97.0		46.00	42.15 D	9.1	
Sargent Manor	Forman	12/31	P						62	32.50	28.81 D	12.8	98.9
Garrison Nursing Home	Garrison	12/31	P	71	62.50	55.51 D	12.6	98.6		62.50	47.65 D	31.2	
Lutheran Sunset Home	Grafton	12/31	N	118	50.00	47.74 F	4.7	99.6		50.00	38.96 F	28.3	
Hillcrest Care Center	Hettinger	6/30	P	88	46.00	39.56 F	16.3	88.6		43.00	33.44 F	28.6	
Central Dakota	Jamestown	12/31	N	100	51.38	47.30 D	8.6	99.1		N/A	39.52 D		
Hi-Acres Manor	Jamestown	12/31	N	116	48.00	43.11 D	11.3	97.6	26	46.00	36.34 D	26.6	
Kenmare Comm. Hospital	Kenmare	12/31	N	12	65.81	65.81 I		94.6		45.81	45.81 I		
Gronna Good Samaritan	Lakota	12/31	N						58	35.00	27.75 D	26.1	98.7
Colonial Manor	LaMoure	12/31	P						60	41.00	31.02 D	32.2	98.0
Maple Manor	Langdon	12/31	P	63	45.00	43.03 D	4.6	99.0		45.00	35.00 D	28.6	
Good Samaritan	Larimore	12/31	N						68	37.00	31.07 F	19.1	96.0
Community Mem. N.H.	Lisbon	12/31	N	45	62.10	48.26 D	28.7	98.8		N/A	40.85 D		
Mandan Villa	Mandan	12/31	P	92	60.50	42.71 D	41.7	98.0	38	56.50	36.11 D	56.5	
Luther Memorial Home	Mayville	12/31	P	69	45.00	43.69 F	3.0	99.8	30	38.50	36.75 F	4.8	
North Central Good Sam.	Mohall	12/31	P						59	38.31	32.77 F	16.9	97.2
Good Samaritan N. Center	Mott	12/31	N						60	39.00	28.94 F	34.8	97.8
Logan County Home for Aged	Napoleon	12/31	N						44	25.50	23.80 F	7.1	98.8
Lutheran Home Good Shepherd	New Rockford	12/31	N	58	51.75	47.08 F	9.9	98.2	28	47.32	40.31 F	17.4	
Elm Crest Manor	New Salem	12/31	N						60	27.00	24.48 D	10.3	98.4
New Town Health Dev. Corp.	New Town	12/31	N	70	53.00	40.98 F	29.3	87.5		49.50	35.03 F	41.3	
Northwood Deaconess	Northwood	12/31	N	66	53.50	53.50 D		93.8	24	49.00	45.02 D	8.8	
Oakes Manor Good Sam.	Oakes	12/31	N						142	32.00	26.42 D	21.1	92.7
Osnabrock Good Sam.	Osnabrock	12/31	N						41	34.95	30.87 F	13.2	97.5
Park River Good Sam.	Park River	12/31	N	79	46.00	37.00 I	24.3	99.5		40.50	31.50 I	28.6	Interim Rate Changed License
Rockview Good Sam. Center	Parshall	12/31	N						60	34.00	30.09 F	13.0	98.1
Mountrail Bethel	Stanley	12/31	N	41	41.00	41.00 D		99.0	16	34.00	34.00 D		
Sheyenne Manor	Valley City	12/31	N						80	34.78	26.31 D	32.2	98.1
Sheyenne Memorial N.H.	Valley City	12/31	N	78	55.99	46.28 D	21.0	98.7		N/A	37.95 D		
Souris Valley Care Center	Velva	12/31	N						48	41.23	41.01 D	.5	97.2
Wahpeton Health Care Center	Wahpeton	12/31	P						91	46.75	33.16 D	41.0	94.0
Wahpeton Nursing Center	Wahpeton	12/31	P	110	58.00	41.38 D	40.2	97.0		N/A	35.55 D		
Pembilier Nursing Center	Walhalla	12/31	N	60	42.50	40.25 F	5.6	99.9		N/A	33.29 F		
Good Shepherd Home	Watford City	12/31	N	47	44.25	44.25 F		98.1		44.25	37.36 F	18.4	
Westhope Home	Westhope	12/31	N	59	39.45	36.16 D	9.1	96.0		36.82	30.82 D	19.5	
Bethel Lutheran	Williston	12/31	N	118	62.00	55.12 D	12.5	97.0	55	42.00	32.55 D	29.0	

* I – Interim Rate
D – Desk Audit
F – Final

The committee received a report on costs currently excluded from Medicaid reimbursement by the Department of Human Services. There are two categories of expenditures currently excluded from Medicaid reimbursement – expenditure limitations and unallowable costs. Expenditure limitations include limitations on administrative salaries, administrator compensation, board of director fees, pension expense, return on investment, Medicare limitations, and administrative cost limitations. These expenditure limitations are dollar or percentage limitations set by the Department of Human Services on the amount of cost to be reimbursed by the state for Medicaid patients.

Unallowable costs include good will; income taxes; bad debts expense; personal comfort items including the cost of telephone, television, and radio located in patient accommodations; dues, contributions, and donations; and certain advertising costs.

The following is a summary of Medicaid reimbursement formula estimated expenditure limitations and unallowable costs based on cost reports filed with the Department of Human Services during 1983:

Expenditure Limitation or Unallowed Cost	Total Cost
Administrative salaries	$26,367
Administrator compensation limitation	65,043
Board of directors' fees	4,775
Pension expense	49,433
Return on investment limitation	59,491
Medicare limitations	280,314
Limits on administrative costs	188,380
Unallowed good will	22,500
Unallowed income taxes	319,721
Unallowed bad debts	66,348
Unallowed personal comfort items	23,993
Unallowed dues, contributions, donations	5,083
Unallowed advertising expense and public relations	21,946
Total	$1,133,394

The Medicaid Reimbursement Task Force reviewed the unallowable cost/expenditure limitation items. The task force reached an agreement and recommended the Department of Human Services consider changing its reimbursement policy in the following areas:

1. Interest to related parties — The task force recommended reimbursement for interest paid to related parties be limited to the lower of the current bank interest rate or 8.5 percent.
2. Pension expense — The task force agreed to explore the possibility of using Department of Labor ERSA standards for approval of pension plans.
3. Medicare cost limits — The task force recommended changing the method of allocating costs to the Medicaid program from the Medicare cost report to ensure that allowable costs are not eliminated by this allocation in those facilities which have both hospital and nursing care facilities.
4. Dues, contributions, and donations — The task force recommended dues, contributions, and donations be allowed based on a per-bed limit.
5. Advertising expense — The task force recommended advertising expense be included with dues, contributions, and donations and be allowed on a per-bed limit.
6. Cable television expense — The task force recommended cable television expense related to common areas be included as an allowable cost in the Medicaid formula and services provided directly to recipients would be an optional personal comfort item and therefore not reimbursable.
7. Capitalization of equipment — The task force recommended the limit on capitalization of equipment be increased from $500 to $1,000.
8. Capitalization of repairs — The task force recommended the limits for capitalization of repairs be increased from the current $1,000 to $5,000.
9. Addition of beds for partial year — The task force recommended current reimbursement methodology be changed to allow the recognition of capital and other necessary costs when beds are added to a facility during a fiscal year.
10. Special assessments — The task force recommended special assessments less than $1,000 be expensed in the year they are paid.

The Department of Human Services reported that changes in allowable costs/expenditure limitations agreed to by task force members will be incorporated into the Department of Human Services' reimbursement manual.

Recommendations

To address the need for containing costs, timely rate determination, identifying reimbursable costs, and reducing the differential between private pay and Medicaid rates the committee recommends Senate Concurrent Resolution No. 4002 to:

1. Urge the Department of Human Services to revise its long-term care facility Medicaid reimbursement system.
2. Urge the Department of Human Services to design and develop before July 1, 1986, a revised prospective long-term care Medicaid reimbursement system to be operational on July 1, 1987, that includes development of reimbursement rates by the department by using historical cost trends with appropriate adjustments for the type of long-term care facility, level of care delivered, and projected economic and other changes.
3. Urge the Department of Human Services to attempt to establish new Medicaid reimbursement rates prior to the beginning of each facility's fiscal year and adjust reimbursement rates to a lower level only if the department determines that information provided by long-term care facilities has been materially or intentionally misstated.
4. Urge the Department of Human Services to develop a reimbursement system that defines allowable and unallowable costs and includes incentives rewarding high cost facilities to reduce costs and low cost facilities to maintain or lower their costs.
5. Provide that the Department of Human Services report to the Legislative Council, or any committee it designates, during the 1985-86 interim on the department's progress in implementing the revised prospective Medicaid reimbursement system.

The committee recommends Senate Bill No. 2053 to assist in reducing the differential between private pay and Medicaid rates by reimbursing long-term care facilities for bad debts expense, personal comfort items, and customary advertising costs. Also, the bill provides the Department of Human Services may not limit reimbursement for administrator compensation, board of directors' fees, pension expense, and other administration costs, except to the extent those costs exceed the costs of the applicable percentile group established by the department for those costs of long-term care facilities. This additional reimbursement is to be paid to only those facilities for which the private pay patient rate does not exceed the rate paid by the Department of Human Services under the medical assistance program.

Property Cost Reimbursement

The Department of Human Services testified that repeated sales of nursing care facilities have resulted in increased costs for the same facilities without an increase in the quality of care provided. Currently the state reimburses facilities for property costs based on the actual purchase price of the facility limited to fair market value.

The Medicaid Reimbursement Task Force studied property cost reimbursement and agreed on changes to

the current Medicaid reimbursement formula. The task force agreed the property cost basis for reimbursement purposes should be dependent upon the seller's length of ownership. It recommended if the seller owned the facility for 15 years or more, the only limitations on reimbursement would be that the purchase price would be limited to fair market value. It also recommended if the seller had owned the facility less than five years the purchaser's depreciation basis would be limited to the seller's cost basis. If the seller owned the facility six to 14 years the basis would be the seller's cost plus 10 percent of the difference between the purchaser's cost and the seller's book value for each year of ownership.

The Department of Human Sevices at the last committee meeting reported it would not be able to put the property cost reimbursement proposal into effect due to federal legislation. It reported the federal government now requires states, as a condition of participation in the Medicaid program, to limit the depreciation basis of purchased nursing care facilities. The department has in effect, since October 1, 1984, rules that limit the basis of assets for depreciation purposes to the lower of the fair market value of the assets or the seller's cost basis less accumulated depreciation. In addition, the department has in effect rules providing for recapture of depreciation, required by the federal legislation. These rules provide for the recapture of depreciation paid after June 1, 1984, when a facility is sold to the extent the sales price exceeds the undepreciated value.

Recommendation

In the area of property cost reimbursement, the committee recommends Senate Bill No. 2055 to limit state reimbursement for rental expenses of long-term care facilities when a provider of services sells his facility to a third party and leases it back. Reimbursement for rental expenses under the bill may not exceed the lesser of the rental expense paid by the provider or the cost of ownership of the facility. This bill limits artificially increased property cost reimbursements resulting from sale and leasebacks.

In addition, the committee recommends Senate Bill No. 2054 to provide when a nursing care facility is sold, the seller shall pay to the Department of Human Services an amount, not to exceed the amount of any capital gain on the sale, equal to all depreciation expense for which the seller was reimbursed by the department because of services received by persons eligible for services under any department program.

Discontinued Medications

The committee heard reports by a select committee formed to study the destruction of discontinued medications in North Dakota long-term care facilities. The committee was formed as a result of the required current practice of destroying unused medications at nursing care facilities resulting in additional costs of $250,000 annually for Medicaid patients. At the last committee meeting the select committee reported data is currently being accumulated and will be analyzed to determine where waste is occurring, who is causing it, and the total estimated value of destroyed medications. After gathering that information, the select committee will meet to discuss options for correcting the situation. Options available include legislation to permit the reuse of remaining doses within a facility; modification of State Board of Pharmacy regulations; unit dose dispensing; and encouraging prudent prescribing, ordering, and dispensing of pharmaceuticals.

Recommendations

The committee commended the select committee studying the destruction of discontinued medications for its work and encouraged the Department of Human Services to distribute reports resulting from the study and to introduce appropriate legislation to limit the destruction of medications to the 1985 Legislative Assembly.

Ancillary Services

The committee received testimony on charges for ancillary services and miscellaneous supplies. Ancillary services are those services not necessarily required by or provided to all residents. Concerned citizens gave examples of what they believed to be inadequate food, excessive daily room rates, and excessive charges for pharmaceuticals and miscellaneous supplies and services in nursing care facilities. Examples given included daily room rates exceeding $70 per day and charges of $1.20 for a swab stick, $30 for 15 minutes in a whirlpool, $20 for a 20-minute heat lamp treatment, and $3.10 for body powder.

Recommendations

The committee recommends Senate Concurrent Resolution No. 4003, urging long-term care facilities to develop a long-term care facility code of ethics that includes guidelines to promote uniformity in the basis for charging for ancillary services and miscellaneous supplies. The committee concluded that some of the charges for these services and supplies are excessive and bear little relationship to the facility's costs of providing the services or supplies.

The resolution urges facilities to develop a long-term care facility code of ethics that includes uniform methods of determining the basis for charging for ancillary services and miscellaneous supplies and urges facilities to provide a current copy of this code of ethics to residents of the facility. The resolution urges the North Dakota Hospital Association and the North Dakota Health Care Association to develop certification procedures that allow member facilities the opportunity to publicize their compliance with this code of ethics.

Other Areas

The committee received information from the Department of Human Services on the optional services program established by the 1983 Legislative Assembly. This program serves people in their homes who might otherwise be institutionalized. It was reported that 365 elderly and disabled persons, ranging in age from one year old to 100 years old, have received services under the program since July 1, 1983. Approximately $380,000 had been spent by the department on the program as of July 31, 1984. The state reimburses county social service boards providing the services in the communities. The optional services available include the adult family foster care, adult protection, case management, chore services, family home care, homemaker services, home health aid, and respite care.

STUDY OF FINANCING RESIDENT CARE AT STATE AND COMMUNITY FACILITIES

Background

House Concurrent Resolution No. 3083 directed a

study of the feasibility of requiring residents, spouses, or families of individuals receiving services to make financial contributions toward the support of those persons in state and community facilities. The resolution states that rapidly increasing health care, construction, personnel, and other costs may require additional financial contributions from the responsible relatives and the person receiving the care. The study resolution directed the committee to determine the current financial responsibilities of all persons at state institutions under the control of the Director of Institutions and the State Hospital including related community facilities.

Review of Current Statutory Law

The committee received a Legislative Council staff memorandum regarding financial responsibilities and legal restrictions on charging institutionalized persons for their cost of care. Responsible relatives are required to pay the cost of care and treatment for State Hospital patients, other than educational costs, up to the patient's 18th birthday. Children educated at the state deaf and blind schools are the constitutional responsibility of state taxpayers and therefore family members are not charged for those services.

Residents over 21 years of age at the Grafton State School and San Haven are charged for expenses for care and treatment. This allows the state of North Dakota to apply the residents' Social Security payments and other entitlements against their cost of care and treatment. Current law provides claims for expenses incurred for resident care and treatment by the state at the Grafton State School, San Haven, and State Hospital may be filed against the guardianship or the estate of the resident. In addition, at the State Hospital claims may also be filed against the estate of a responsible relative for resident care and treatment.

The report concluded there does not appear to be constitutional limitations to enacting legislation authorizing charging inmates at the State Penitentiary or parents of students at the State Industrial School for their cost of maintenance. Also, responsible relatives of institutionalized mentally incompetent persons may by law be required to reimburse the state for expenses of their care. It was reported the state could jeopardize its eligiblity for federal special education funds if the state charged for the cost of maintaining handicapped children in state institutions.

The Department of Human Services reported a parental resources test is applied at community intermediate care facilities for the developmentally disabled to determine if Title XIX funds may be received for the care and treatment provided minors at the facility. If parental resources exceed limitations, parents are responsible for the cost of care and treatment of children up to the age of 21.

Testimony

The Association for Retarded Citizens testified that parents of institutionalized children pay a portion of their children's cost of care and treatment through their tax payments, out-of-pocket expenses, and nonmonetary costs associated with raising a developmentally disabled child including social and emotional costs.

The North Dakota Mental Health Association testifed that the collection efforts by the North Dakota State Hospital are a burden on patients and are counterproductive because they create anxiety and stress which often results in the patient being readmitted to the State Hospital. The Department of Human Services reported the collection policies of the State Hospital are being reviewed.

Representatives of the Easter Seal Society of North Dakota testified on the guardianship program for residents of the Grafton State School. The 1983 Legislative Assembly provided that the Superintendent of the Grafton State School must divest himself of guardianship of residents at the school. The North Dakota Developmental Disabilities Council contracted with the Easter Seal Society to recruit and train guardians for those residents. It was reported that if the Legislative Assembly should require a financial obligation of those individuals volunteering to serve as guardians, it would become difficult to obtain guardians for those residents.

Representatives of the State Penitentiary testified that inmates on work release are charged $5 per day for their care at the institution. Representatives of the State Industrial School reported the current cost of care is approximately $59 per day and it is unlikely any parents due to their economic status could afford to pay the full cost of care for their children at the school.

Representatives of the Grafton State School reported that approximately 11 percent of the billings for services at the school are actually collected. They reported additional collection efforts would require additional staff.

The North Dakota Schools for the Deaf and Blind representatives said a policy of charging for care and treatment at the two schools would result in a decrease in the number of enrollments which could ultimately lead to the closing of both schools. They reported that Public Law 94-142 provides that each child is entitled to a free and appropriate education at no cost to the parents.

Representatives of community developmental disability facilities testified that currently some parents do pay for the cost of room and board and the facilities attempt to obtain food stamps, housing assistance, and rent subsidy payments for eligible residents.

Recommendations

The committee recommends no changes be made to current law relating to the financing of resident care at state and community facilities. The committee believes changes to current law would not provide a more equitable method of charging for services than currently exists. In addition, the committee recognizes the possibility of jeopardizing federal special education funds by violating Public Law 94-142 which requires a free and appropriate education for handicapped children. The current financial and personal costs incurred by responsible relatives of residents are additional reasons for recommending no changes to current law.

MONITORING STATUS OF APPROPRIATIONS

Background

Beginning with the 1975-76 interim, a Legislative Council interim committee has been assigned the responsibility of monitoring the status of major state agency and institution appropriations. The Budget "C" Committee was assigned this responsibility for the 1983-84 interim.

The committee's review focused on expenditures of major state agencies including the institutions of

higher education and the charitable and penal institutions, the appropriations for elementary and secondary education, and the appropriations to the Department of Human Services for medical and economic assistance. The committee also heard reports on the progress of the deinstitutionalization of residents from the Grafton State School, the status of the state general fund, on the two percent budget adjustment made to state agencies' and institutions' 1983-85 appropriations, the creation of a central management system for state motor vehicles, and federal mineral lease and royalty payments.

Status of Appropriations of Major Agencies

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

1. Overview of total expenditures and revenues at the higher education and charitable and penal institutions.
2. Number of residents and personnel at the charitable and penal institutions.
3. Foundation aid program.
4. Economic and medical assistance payments.

At the August 1984 meeting, the staff presented reports on these areas for the period July 1, 1983, through June 30, 1984, the first year of the 1983-85 biennium. The reports included the following information:

1. Total expenditures of the institutions of higher education for the first year of the 1983-85 biennium were $125.5 million, or $2.8 million less than an estimated $128.3 million. Total revenues during the same period were $38.9 million or $2 million more than an estimated $36.9 million.
2. Total expenditures at the charitable and penal institutions for the first year of the biennium were $62.1 million, or $3.9 million less than an estimated $66 million. Total revenues for the same period were $18.9 million, or $.5 million less than an estimated $19.4 million.
3. Average student, resident, and inmate populations at the charitable and penal institutions totaled 2,242 persons, 90 less than estimated. Average monthly FTE positions for the same institutions totaled 2,339 positions, 224 less than estimated. The following schedule is a comparison of actual and estimated residents and employees at the charitable and penal institutions for the first year of the 1983-85 biennium:

	Average Number of Residents		Average Employees	
Institution	Estimated	Actual	Estimated	Actual
Industrial School	95	93	79.5	76.5
School for the Deaf	70	68.5	59.6	57.6
School for the Blind	38.5	37.5	36	36
Grafton State School	735	710.5	1,124	995.5
San Haven	192.5	190.5	296	277
State Penitentiary	427.5	405	129	129
State Hospital	658	622	805	734
Veterans' Home	116	115	33.9	33.7
Total All Institutions	2,332.5	2,242	2,563	2,339.3

4. The Department of Public Instruction distributed foundation aid payments for the first year of the biennium totaling $176.2 million compared to an estimated $179.5 million. In addition, the department reported distributions from the state tuition fund during the first year of the biennium totaled $21.3 million or approximately $176 per pupil, including $5.4 million or about $45 per pupil carried over from the 1981-83 biennium. It was reported actual weighted student units for the first year of the biennium totaled 125,445 compared to the 127,687 estimated at the close of the 1983 Legislative Assembly.
5. Aid to Families with Dependent Children (AFDC) payments for the period July 1, 1983, through June 30, 1984, totaled $15.7 million compared to revised estimates of $15.9 million. Estimates prepared at the close of the 1983 Legislative Assembly for the same period totaled $16.5 million. Total AFDC expenditures for the biennium are now estimated to be $33.2 million compared to the original estimate of $33.9 million. Actual average monthly AFDC caseload for the six months ending June 30, 1984, was 4,210, or 41 less than the estimate of 4,251.
6. Actual medical assistance payments for the first year of the biennium totaled $90.9 million or $1 million less than the revised estimates of $91.9 million. Estimates of medical assistance payments made at the close of the 1983 session totaled $92.7 million for the same period. Total medical assistance payments for the biennium are now estimted to be $216.4 million compared to the original estimate of $217.8 million. Actual average monthly medical assistance clients for the six months ending June 30, 1984, were 1,910 for skilled, 1,705 for intermediate, and 1,115 for hospital care. This compares to estimates of 2,052, 1,569, and 1,234, respectively.

Status of Deinstitutionalization

During the interim the committee heard reports by the Department of Human Services regarding the placement of residents from the Grafton State School and San Haven into community facilities and the status of the deinstitutionalization budget. It was reported that during the 1983-85 biennium 107 persons have been placed from the institutions as of August 24, 1984. A total of 255 residents are planned to be placed by June 30, 1985, which should reduce the institutional population to 650 residents. The following schedule compares the total number of residents and employees at the two institutions since 1970 and those planned through June 1989:

COMPARISON OF RESIDENT AND EMPLOYEE LEVELS AT THE GRAFTON STATE SCHOOL AND SAN HAVEN

	Residents	Employees
Fall 1970	1,487	729
Fall 1972	1,396	753
Fall 1974	1,227	790
Fall 1976	1,149	893
Fall 1978	1,114	860
March 1981	1,049	863
October 1982	978	1,096
June 1983	905	1,192
Less placements (projected)	(255)	
June 1985 (projected)	650	1,368
Less placements (projected)	(200)	
June 1987 (projected)	450*	1,384
Less placements	200	
June 1989 (projected)	250*	

*These are the court-ordered population levels.

The Department of Human Services reported as of June 1984, $7.9 million has been expended for the developmental disabilities community-based care program (deinstitutionalization) compared to estimates of $9.9 million for the same period. Actual expenditures were less than estimated due to the development of community facilities at a pace slower than anticipated at the close of the 1983 Legislative Assembly.

The committee received testimony on the need for treatment centers for developmentally disabled persons operated by profit organizations. Currently those facilities may be operated only by nonprofit organizations. The committee received testimony that profit organizations in Minnesota operate these facilities for the developmentally disabled at costs competitive with nonprofit organizations.

Recommendation

The committee recommends House Bill No. 1047 to allow profit corporations to obtain licenses to operate treatment centers for the developmental disabled.

Status of General Fund

During the interim the Budget "C" Committee and Budget Section heard reports by the Office of Management and Budget (OMB) regarding the status of the state general fund. Please refer to the Budget Section report for a summary of OMB's reports.

Budget Adjustments

The committee heard a report by the Office of Management and Budget regarding the 1983-85 budget adjustments made by the 1983 Legislative Assembly. OMB reported the budget reductions totaled $12,462,226, including $2,878,556 for a 1.5 percent higher education budget adjustment, representing .6 percent of the total 1983-85 appropriations before the adjustments. It was reported of this amount $7.6 million was from the general fund and $4.9 million from other funds. OMB reported the $12.5 million reduction was allocated to the following line items: $2.24 million to salaries and wages; $7.49 million to operating expenses; $.47 million to data processing; $2.075 million to equipment; and $.19 million to special line items.

Motor Vehicle Central Management System

The committee heard a report from the State Highway Department on the progress made in implementing a central management system for state motor vehicles. The 1983 Legislative Assembly passed Senate Bill No. 2062 creating a central management system for state-owned motor vehicles. The central motor pool is located in Bismarck with satellite motor pools in the seven State Highway Department district locations. The State Highway Department reported that when fully operational 42 state agencies will be a part of the motor pool with a total of 1,670 vehicles. Representatives of the State Highway Department reported two concerns relating to the state motor pool — requests of agencies to purchase new vehicles, which the motor pool recommends delaying until the utilization of current vehicles is determined, and the determination of the monthly and daily rental rates and mileage charges. The department reported those rates will be adjusted when necessary to cover actual costs.

Federal Mineral Lease and Royalty Payments

The committee heard a Legislative Council report on the federal mineral lease and royalty payments North Dakota receives. It was reported for the 1983-85 biennium as of July 1984 a total of $12.9 million has been received, which is the amount estimated at the close of the 1983 session to be received for the entire biennium. Revised estimates indicate the state will receive approximately $20 million for the entire 1983-85 biennium. The increase in collections is a combined result of the federal government making payments on a monthly rather than quarterly basis, the audit effort by the State Auditor's office, and increased mineral activity.

CHARITABLE GAMBLING COMMITTEE

Under its only study resolution, Senate Concurrent Resolution No. 4022, the Charitable Gambling Committee was charged with the responsibility of studying the operation of games of chance, emphasizing the level of allowable expenses to be deducted by a charity, and the uses made of the net proceeds.

Committee members were Senators Thomas Matchie (Chairman), Hal Christensen, Raymon E. Holmberg, and Wayne Stenehjem; and Representatives Moine R. Gates, Lyle L. Hanson, Kenneth E. Koehn, William E. Kretschmar, Clarence Martin, Arlin D. Meier, and Jean Rayl.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

HISTORY OF CHARITABLE GAMBLING IN NORTH DAKOTA

Gambling has been a topic of concern in North Dakota since the earliest days of statehood. E. Robinson's book, *History of North Dakota,* describes some of the events. According to Robinson, in the first legislative session after statehood (1889-90), an attempt was made to introduce into this state the Louisiana lottery which was seeking a new home in light of the impending expiration of its charter in its state of origin. The operators of the lottery were even willing to offer the state an initial payment of $100,000 followed by annual payments of $75,000 for the privilege of operating a lottery. The scandal and controversy following this attempt led to the adoption of the new state's first constitutional amendment, outlawing all forms of lotteries. That constitutional prohibition was retained until 1976 when the constitutional provision was amended to allow charitable gambling.

Even before 1976 attempts had been made to introduce other forms of gambling in the state. In 1968 the voters rejected a constitutional amendment that would have authorized parimutuel betting. A similar fate befell an attempt in 1974 to authorize horseracing. The 1972 Constitutional Convention proposed a new constitution that did not contain the provision prohibiting lotteries. Although the entire 1972 constitution was disapproved, on a separate question the voters rejected a proposal that lotteries and gift enterprises be prohibited.

Section 25 of Article XI of the Constitution of North Dakota, as amended in 1976, allows the Legislative Assembly to authorize "bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses."

Entire net proceeds are determined after deducting, from adjusted gross proceeds (AGP), allowable expenses and the charitable gambling tax. Under North Dakota Century Code (NDCC) Section 53-06-11(3), there is a ceiling on the total expenditures that may be deducted from AGP. The ceiling is 35 percent of AGP for organizations that conduct charitable gambling on more than one site, and 38 percent of AGP for organizations conducting charitable gambling only at one site. This figure has changed over the years since the constitutional amendment allowing gambling was adopted. In the 1977 and 1979 versions of the law, the limit was one-third of AGP. In 1981 the limit was raised to 35 percent of AGP. In 1983 the provision allowing 38 percent for one-site organizations was added.

A further restriction on deductible expenses under Section 53-06.1-11 is that expenses may not include "overhead, captial costs, and general maintenance" of the organization.

A further limitation on expenses was added in the 1983 session of the Legislative Assembly. An organization conducting a blackjack game is limited in rental expenditures to $150 per month per blackjack table.

EXPENSE LIMITATION

In accordance with the study resolution, a primary focus of the committee's study was the expense limitation. As mentioned, deductible expenses for a charitable organization are limited to 35 or 38 percent of AGP. Any expenditures over the limit must be financed from the charity's nongambling revenue.

Percentage Level

One information gathering problem the committee faced was determining exactly how many organizations presently "overspend" — exceed the allowable expense levels. The completion of a project by the Attorney General's office of computerizing charitable gambling tax returns greatly facilitated this deliberation. At its final meeting the committee had before it detailed information for the first two calendar quarters of 1984. This data supplemented vast quantities of oral and written testimony from representatives of charitable organizations describing their difficulties in meeting the present expense limits. At the end of this report are tables derived from the Attorney General's reports. These tables include information on expense limits and rent limits.

Witnesses said it was difficult to anticipate volume and adjust expenses accordingly; that it was difficult to hire good people at wage rates necessitated by the expense limits; and that, contrary to the implication of the present expense limit difference between one-site and multisite organizations, multisite organizations do not have economies of scale enabling them to meet the lower limit. See Table 1. Some witnesses suggested tying the level of allowable expenses to AGP volume. However, representatives of organizations with relatively high AGP volume testified that there are not necessarily any economies of scale and that their expense percentages did not decrease just because of higher volume. See Table 2.

Witnesses described increased costs of equipment, services, and labor. For the labor intensive game of blackjack, wage expense was cited as the most important factor in complying with the expense limitations. One problem described in this context was the increase in the employer's contribution for Social Security which took effect in January 1984, while another was the lower productivity and resulting higher costs caused by requiring the charity to accept a $1 bet in blackjack (NDCC Section 53-06.1-10). The impact of blackjack on an organization's ability to stay within the expense limit is apparent in Table 3.

Allowable Items

Other witnesses suggested changes in the specific items for which expenditures are allowed. Under Section 53-06.1-11(4), expenses are deductible only if made for the purchase of equipment and supplies, maintenance of equipment, rent, janitorial services, accountant's fees, and license fees. Some witnesses suggested there be no restriction on the types of expenditures that could be made. The committee believes accountability should be maintained and therefore did not adopt the proposal.

Other suggestions included allowing items such as overhead, utilities, and audit fees. It was pointed out that since only Class B organizations can pay rent, and presumably rent includes utility expenses, some relief should be afforded organizations which own the premises and must pay utility expenses, despite the fact that those expenses are not deductible.

Accounting Period

Most charitable gambling enterprises are seasonal in nature, with wide variance in dollar volume among the seasons of the year. Because, under rules adopted by the Attorney General [North Dakota Administrative Code (NDAC) Section 10-04-07-08 (1)], compliance with the expense limit is determined on a quarterly basis, a charitable organization that "overspends" in one quarter is not allowed to make up for that by "underspending" in another quarter. Witnesses testified as to the cyclical nature of revenue and expenses, saying in some quarters revenue fell enough to make compliance difficult, while in other quarters revenue was high enough to make it easier. Witnesses suggested allowing an annual accounting period for determining compliance.

Recommendation

The committee recommends Senate Bill No. 2056 to increase the limitation on allowable expenses to 40 percent of AGP for all organizations. Table 1 indicates that this level is an attainable one for most organizations. The bill also allows full-year computation of compliance with the 40 percent limit. Finally, the bill permits as a deductible expense, by charities that own the charitable gambling premises, the cost of utilities for heat, light, or electricity.

RENT LIMITATIONS

The original charitable gambling law made no reference to the amount of rent that a host site could charge a charitable organization. In 1983, in response to reports that some host sites were charging exorbitant rents, the law was changed for blackjack sites to limit monthly rent to $150 per blackjack table.

The rent limit for blackjack sites did not totally resolve the issue because, as described by one witness, each new solution produces its own evasions. For one thing, there was no ceiling for sites without blackjack. About one-eighth of the licensees without blackjack paid more than 10 percent of AGP for rent. See Table 4. Another recurring problem reported to the committee was that some host sites evaded the $150 per table rent ceiling by requiring the charity to operate more blackjack tables than the site justified. About one-fourth of the licensees with blackjack paid five percent or more of AGP for rent. See Table 4. The Attorney General's office reported that its audits during the interim did not include an evaluation of whether a given number of tables at a particular site was appropriate. It was apparent that further action was necessary. One solution suggested was to add a rent limitation based on a percentage of AGP. The quarterly returns analyzed for the first two calendar quarters of 1984 indicate that most charities' rent did not significantly exceed 2.5 percent of AGP. See Table 4.

Several witnesses described efforts by host sites to force a sponsoring charity to purchase liability insurance, to fund remodeling of a site, or otherwise to respond to "pirating" attempts (an attempt by a host site or competing charity to bid up the rent). Proponents of a rent limit noted that when charitable gambling was first instituted, the argument had been made that rent would not be charged, because the compensation for a host site allowing charitable gambling would be the additional business attracted to the site.

Recommendation

The committee recommends Senate Bill No. 2057 to limit monthly rent to the lesser of 2.5 percent of monthly AGP or $150 per blackjack table. For sites without blackjack, the rent limit would be 2.5 percent of monthly AGP. From Table 4 it is apparent that a large majority of organizations can comply with this limit. Several witnesses testified that bingo, which requires considerable space, could not be conducted with this limitation. Therefore, the bill exempts sites whose primary charitable gambling activity is bingo.

SPORTS POOLS

Under NDCC Section 53-06.1-09, payback on sports pools is limited to two-thirds of the gross amount wagered. Although sports pools comprise the smallest segment of the charitable gambling industry in the state, the committee heard numerous reports of compliance difficulties centering around illegal sports pools. One of the most frequent explanations of the popularity of illegal sports pools was the relatively low payout of the legal ones. Another point made was that sports pools would help a charity comply with the expense limitation, as sports pools are, unlike blackjack, a low labor cost activity. The committee also heard testimony that enforcement and administration of sports pools could be adequately conducted at the local level.

Recommendation

The committee recommends Senate Bill No. 2058 to increase the payout limit on sports pools to 90 percent of the amount wagered.

The committee also recommends Senate Bill No. 2059 to allow local licensing of sports pools.

SITE REGULATION

The committee considered several suggestions for improving compliance with the charitable gambling law. One problem described to the committee was occasional bidding wars between charities for host sites, brought on by "pirating."

The committee heard testimony concerning other enforcement difficulties in bars. One witness described an incident in which the owner of a bar insisted on playing pull tabs, despite a rule of the Attorney General (NDAC Section 10-04-06-04.1(2) prohibiting bar owners or operators from participating in games of chance at their own host site. Several methods of discouraging "pirating" were considered.

One method considered was requiring a waiting period before a sponsoring charity can be changed. This would lessen the "pirating" incentive by denying the host site the rent revenue and other revenue arising from the charitable gambling activity for the waiting period. One difficulty with this approach is that a change of sponsoring charities often arises from reasons other than "pirating," e.g., when a sponsoring charity wants to close its charitable gambling operation. This problem can be solved by allowing a waiver of the waiting period if the outgoing sponsoring charity assents.

The proposal originally considered by the committee required a six-month waiting period. Some witnesses suggested a waiting period of only one month. Because the local site approval process usually takes at least a month, the general consensus was that one month was too short a waiting period. On the other hand a six-month waiting period was criticized as being too long and imposing a severe penalty on host sites changing sponsoring charities for reasons other than "pirating." A two-month waiting period was suggested as a compromise that would effectively discourage "pirating" yet not unduly burden appropriate changes in sponsoring charities at a host site.

Another method considered was allowing administrative action against a host site's liquor license for violating the charitable gambling law. This would likely discourage activities such as demands by a bar owner to play the games.

Recommendations

The committee recommends Senate Bill No. 2060 to require a two-month waiting period before a new sponsoring charity can replace an old one. This waiting period can be waived if the outgoing charity and the host site agree.

The committee also recommends Senate Bill No. 2061 to allow suspension or revocation of a liquor license when the holder of the license violates the charitable gambling law or the general criminal prohibition of other kinds of gambling.

OTHER MATTERS

In addition to the recommended bills, the committee considered two other bill drafts but does not recommend them.

Local Subdivision Tax Share

Under NDCC Section 53-06.1-12, a tax of five percent of the first $600,000 of AGP per quarter is imposed on charitable gambling organizations. The tax revenue is distributed to the state and local subdivisions so that a share representing three percent is allocated to the state, and a share representing the other two percent is allocated to the political subdivision in which the site is located. The tax rate increases to 20 percent of AGP if the quarterly AGP exceeds $600,000. The ratio of distribution between the state and local subdivision remains 60 to 40. To date no organization has had enough AGP to pay the higher tax.

The committee heard considerable testimony as to the uses made by subdivisions of their share of the gambling tax. One frequently reported use, of which the committee disapproves, is the placing of the funds to an unspecified use by the police department or even into the subdivision's general fund. The committee considered a bill draft that would have required the Attorney General to approve a subdivision's proposed uses of its share of the tax. If the subdivision did not get this approval, that portion of the tax would have been waived; the uncollected tax would then be part of the distribution to the charity's ultimate beneficiaries. The Attorney General's staff said operation under the bill draft would turn that office into a grant approving agency. They also noted that a charity that files statewide consolidated tax returns would be unable to do so if the charity operates in some jurisdictions entitled to the local share and others not so entitled.

Because of the administrative difficulties of the proposal, the committee did not approve the bill draft. However, many members of the committee expressed concern about inappropriate uses of charitable gambling tax proceeds by subdivisions. Support was expressed for some method to ensure that charitable gambling tax proceeds are properly applied exclusively to enforcing the charitable gambling law.

Donations to Law Enforcement Agencies

The committee also considered a bill draft that would have prohibited donations to law enforcement agencies. Some witnesses indicated a concern that donations to law enforcement agencies might create an appearance of impropriety and provide a dangerous temptation to unfair enforcement. For example, concern was expressed that a law enforcement agency receiving donations from charitable gambling conducted at a particular bar might be less vigorous in enforcing the charitable gambling law at that bar, or in stopping drivers leaving that bar. However, no witness testified as to specific instances of abuse by law enforcement agencies. On the other hand, considerable testimony was received as to the absence of abuses. Because problems had not been reported, the committee decided not to recommend the bill draft.

Other Topics Considered

The committee discussed several issues which did not result in recommendations. One such issue was whether distribution of proceeds to out-of-state beneficiaries should be permitted, or whether distributions should be restricted to in-state beneficiaries. Presently some distributions are made to out-of-state beneficiaries. Considerable discussion was given to the issue of statewide registration of charitable gambling employees. On another topic, some witnesses suggested allowing tip betting in blackjack and requiring chips for blackjack to be registered, because blackjack chips are the effective equivalent of money.

The committee also heard reports by the Attorney General's office of the quarterly revenues from charitable gambling during the interim. The latest estimate of tax revenue for the current biennium was that the total revenue would be $2.7 million to $2.8 million (i.e., state share $1.62 million to $1.68 million, local share $1.08 million to $1.12 million). The committee also toured charitable gambling sites in the Fargo area to observe firsthand some of the mechanics involved in internal audit, internal security, and the games themselves. A meeting was held in Fargo to facilitate testimony of witnesses in the eastern part of the state, from which a large portion of charitable gambling revenue is derived. In other meetings, the committee saw samples of confiscated equipment used by people trying to cheat at the games.

TABLE 1
COMPLIANCE WITH EXPENSE LIMITATION

Share of AGP Used for Expenses	Class A Licensees		Class B Licensees		All Licensees
	Licensees in Bracket	Percentile of Bracket	Licensees in Bracket	Percentile of Bracket	Percentile of Bracket
0-20%	10.6%	10.6	30.8%	30.8	23.3
21-25	7.7	18.3	8.3	39.1	31.3
26-30	7.7	26.0	4.5	43.6	37.0
31-32	4.7	30.7	3.5	47.1	40.9
33	3.8	34.5	1.0	48.1	42.9
34	3.4	37.9	2.5	50.6	45.7
35	3.8	41.7	2.8	53.4	48.8
36	3.0	44.7	2.5	55.9	51.5
37	18.7	63.4	5.5	61.4	61.9
38	13.2	76.6	3.5	64.9	69.0
39	1.7	78.3	.8	65.7	70.1
40	4.3	82.6	1.0	66.7	72.3
41-44	4.3	86.9	6.0	72.7	77.7
45-47	3.4	90.3	5.5	78.2	82.4
48-50	2.1	92.4	4.5	82.7	86.0
51-55	2.6	95.0	3.3	86.0	89.0
56-60	2.6	97.6	4.8	90.8	92.9
61-75	2.6		5.3	96.1	97.2
76-100	0.0		4.3		

NOTE: The expense limit is 38 percent of AGP for licensees with only one site (all Class A's and some Class B's) and 35 percent of AGP for licensees with more than one site (the remaining Class B's). NDCC §53-06.1-11(3).

Source: Adapted from Attorney General's reports.

TABLE 2
ECONOMIES OF SCALE ISSUE
COMPLIANCE WITH EXPENSE LIMIT COMPARED TO AGP VOLUME OF LICENSEE

AGP Range	Class A	Class B	All Licensees
	Average Share of AGP Used for Expenses	Average Share of AGP Used for Expenses	Share of AGP Used for Expenses
Not over $5,000	36%	34%	35%
$ 5,001-$10,000	39	42	41
$10,001-$15,000	43	41	42
$15,001-$20,000	33	46	39
$20,001-$25,000	34	54	41
$25,001-$30,000	38	60	46
$30,001-$35,000	38	59	45
$35,001-$40,000	37	61	49
$40,001-$45,000	37	49	41
$45,001-$50,000	35	43	38
$50,001-$60,000	34	42	37
$60,001-$70,000	34	58	38
$70,001-$80,000	32	50	45
$80,001-$90,000	24	54	39
$90,001-$100,000	34	38	36
Over $100,000	32	47	42

Source: Adapted from Attorney General's reports.

TABLE 3
THE IMPACT OF BLACKJACK – COMPLIANCE WITH EXPENSE LIMITATION MEASURED AGAINST PRESENCE OR ABSENCE OF BLACKJACK

	With Blackjack		Without Blackjack	
Share of AGP Used for Expenses	Licensees in Bracket	Percentile of Bracket	Licensees in Bracket	Percentile of Bracket
0-20%	6.2%	6.2	39.2%	39.2
21-25	5.9	12.1	10.0	49.2
26-30	4.2	16.3	7.0	56.2
31-32	4.9	21.2	3.0	59.2
33	2.3	23.5	1.8	61.0
34	3.6	27.1	2.1	63.1
35	3.9	31.0	2.4	65.5
36	1.3	32.3	4.0	69.5
37	12.4	44.7	8.5	78.0
38	7.5	52.2	6.7	84.7
39	2.0	54.2	.3	85.0
40	2.3	56.5	2.1	87.1
41-44	8.5	65.0	2.4	89.5
45-47	5.9	70.9	3.6	93.1
48-50	5.6	76.5	1.8	94.9
51-55	4.9	81.4	1.2	96.1
56-60	7.2	88.6	.9	97.0
61-75	7.5	96.1	1.2	98.2
76-100	3.9		1.5	

Source: Adapted from Attorney General's reports.

TABLE 4
RENT EXPENSES

	With Blackjack		Without Blackjack		Total	
Share of AGP Spent on Rent	Licensees in Bracket	Percentile of Bracket	Licensees in Bracket	Percentile of Bracket	Licensees in Bracket	Percentile of Bracket
0%	32.6%	32.6	59.1%	59.1	42.3%	42.3
0.5	1.5	34.1	7.8	66.9	3.8	46.1
1	1.2	35.3	.9	67.8	1.1	47.2
1.5	3.5	38.8	.9	68.7	2.5	49.7
2	5.7	44.5	.4	69.1	3.8	53.5
2.5	6.0	50.5	.0	69.1	3.8	57.3
3	6.0	56.5	.9	70.0	4.1	61.4
3.5	5.2	61.7	2.2	72.2	4.1	65.5
4	5.5	67.2	.9	73.1	3.8	69.3
4.5	5.5	72.7	2.6	75.7	4.4	73.7
5	5.0	77.7	.4	76.1	3.3	77.0
5.5	2.2	79.9	.9	77.0	1.7	78.7
6	2.5	82.4	2.2	79.2	2.4	81.1
7	4.2	86.6	2.2	81.4	3.5	84.6
8	2.5	89.1	2.2	83.6	2.4	87.0
9	3.5	92.6	1.7	85.3	2.8	89.8
10	1.0	93.6	2.2	87.5	1.4	91.2
11	1.7	95.3	.4	87.9	1.3	92.5
12	1.0	96.3	.9	88.8	.9	93.4
13	.7	97.0	1.3	90.1	.9	94.3
14	.7	97.7	3.0	93.1	1.6	95.9
15	.0	97.7	.9	94.0	.3	96.2
16	.2	97.9	.4	94.4	.3	96.5
17	.5	98.4	.4	94.8	.5	97.0
18	.0	98.4	.0	94.8	.0	97.0
19	.2	98.6	1.7	96.5	.8	97.8
20	.0	98.6	.4	96.9	.2	98.0
Over 20	1.2		3.4		2.1	

NOTE: Data is from Class B organizations only. By definition Class A organizations own the site and therefore do not pay "rent." NDCC §53-06.1-03(2) (a).
Source: Adapted from Attorney General's reports.

EDUCATION "A" COMMITTEE

The Education "A" Committee was assigned two subjects for study both of which were directed by 1983 House Concurrent Resolution No. 3077. The committee studied elementary and secondary school finance and the future provision of special education programs. The interim study of these areas represents an effort to continue legislative monitoring of school funding formulas in general and the efficient delivery of special education services.

Committee members were Senators Curtis N. Peterson (Chairman), LeRoy Erickson, Joe B. Leibhan, Evan E. Lips, Don Moore, and William Parker; and Representatives Moine R. Gates, William E. Gorder, Mike Hamerlik, Serenus Hoffner, Irven Jacobson, Kenneth Knudson, Bruce Laughlin, Thomas Lautenschlager, David P. O'Connell, Alice Olson, Emil J. Riehl, Wayne G. Sanstead, Orville Schindler, Steven J. Swiontek, and Michael Unhjem.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

ELEMENTARY AND SECONDARY SCHOOL FINANCE

Principles of the School Foundation Aid Formula

The modern school foundation aid program that establishes the formula for distributing state financial assistance to local school districts has been in effect in North Dakota since 1959. Foundation aid payments are designed to support the cost of elementary and secondary school education on a per-pupil basis. The foundation aid formula utilizes three major components to derive the amount of state payments made to school districts.

Per-Pupil Payments

The first component of the foundation aid formula is the per-pupil based state payment. In addition to the per-pupil based state payment schools receive a per-pupil payment from the state tuition trust fund. Total per-pupil payments made to schools have increased from the 1975-76 school year through the 1984-85 school year as follows:

	Foundation Payment	Tuition Apportionment	Total From State Sources
1975-76	$ 640	$ 38	$ 678
1976-77	690	47	737
1977-78	775	47	822
1978-79	850	53	903
1979-80	903	80	983
1980-81	970	106	1,076
1981-82	1,425	98	1,523
1982-83	1,353*	158	1,511
1983-84	1,400	176	1,576
1984-85	1,350	176 (est.)	1,526

*The 1981 Legislative Assembly provided for a $1,591 per-pupil foundation aid payment. The appropriation necessary to fund this payment was made in anticipation of certain oil extraction tax revenues which were not received by the state.

Weighting Factors

The second major component of the foundation aid formula is the use of weighting factors which generally favor schools with lower enrollment and higher per-pupil costs. The weighting factors were included in the original foundation aid program formula to account for the fiscal burdens suffered by school districts with low enrollments and proportionately high per-pupil costs. The weighting factors are also higher for those school districts operating high schools. The per-pupil based state foundation aid payment is multiplied by the appropriate weighting factors according to the school district enrollment in its high schools and elementary schools. The current weighting factors used are as follows:

Kindergarten	.50
Rural elementary	1.30
Elementary (1 to 100 students)	1.00
Elementary (100 to 999 students)	.90
Elementary (1,000 or more students)	.95
Seventh and eighth grade students	1.00
High schools with one to 74 students	1.70
High schools with 75 to 149 students	1.40
High schools with 150 to 549 students	1.32
High schools with 550 or more students	1.20

The number of weighted pupil units in a school district multiplied by the foundation aid base payment equals the gross entitlement of the school district from the state foundation aid program.

Equalization

After a school district's gross entitlement of foundation aid is established, the third major component of the foundation aid formula, that of property equalization, is applied. The gross entitlement, less the amount raised by a 20-mill equalization factor, equals the net state foundation aid payment. The 20-mill equalization factor is multiplied times the net assessed and equalized valuation of property in each school district. The intent of this "equalization factor" is to make state educational funds available for redistribution to school districts which have relatively low property valuations. The underlying assumption justifying application of this equalization factor is that a school district with high property valuation is in a better position to raise locally a portion of its total cost of education than is a district with a low assessed property valuation. As this hypothetical 20-mill levy causes the amount of state aid paid to a district to be decreased, the premise is that the high valuation district will and should pay a greater portion of its overall cost of education.

Up until 1981 all counties were also required to actually levy 21 mills to raise revenue in support of education at the local level. The revenue raised by the 21-mill county levy was paid to local school districts. The amount of revenue raised by the county levies varied depending on the property wealth of each county. The theory and rationale of this mandatory levy was that since the more property wealthy counties raise more revenue locally and receive a proportionately smaller share of state aid payments, more money was available through the state foundation aid program to be distributed to property poor school districts. Equalization of educational opportunity was therefore enhanced.

The passage in November 1980 of Initiated Measure No. 6 brought with it expectations for dramatically increased revenues for, among other things, state educational finance. Initiated Measure No. 6 imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax be used to make possible state funding of elementary and secondary education at a 70 percent level. With the electorate having approved of the concept of public education being funded at a 70 percent level by the state, the 1981 Legislative Assembly provided that 60 percent of the oil extraction tax revenue be allocated to the state school foundation aid program. The mandatory 21-mill county levy was eliminated by the 1981 Legislative Assembly. Foundation aid payments were also increased by more than 40 percent for the 1981-82 and 1982-83 school years. The Legislative Assembly has maintained the goal of financing 70 percent of the costs of public school education by the state.

Transportation and Tuition Apportionment Payments

In addition to basic foundation aid payments, school districts receive transportation and tuition apportionment payments. Transportation aid is paid to school districts according to the number of miles traveled and the size of schoolbuses being operated. Transportation payments for the 1983-85 biennium are 36 cents per mile for the first year and 38 cents per mile for the second year for schoolbuses with a capacity to carry nine or fewer students and 73 cents per mile the first year and 76 cents per mile the second for schoolbuses having the capacity to carry 10 or more students. In addition, school districts receive 19 cents per student per day for each student transported in a bus with a capacity to carry 10 or more students. Finally, school districts which arrange for transportation within the incorporated limits of a city within which a school is located may receive 9.5 cents per student per one-way trip.

An increasingly important source of revenue for school districts is the state tutition trust fund. This fund consists of the net proceeds from all fines for violation of state laws and the interest and income from the state common school permanent trust fund. State law requires the Office of Management and Budget to certify to the Superintendent of Public Instruction the amount in the state tuition trust fund on the third Monday in February, April, August, October, and December in each year. The superintendent is then required to apportion the money in the fund among all school districts in the state in proportion to the number of children of school age residing in each school district. The per-pupil amount of tuition apportionment payments made to school districts during the 1975-76 school year through the 1984-85 school year is shown in the preceding chart.

In addition to the various payments already discussed, school districts receive other revenue. Some of this revenue is restricted to specific purposes such as special education or vocational education programs. Other revenue is unrestricted, such as the portion of revenues from mineral resources taxes which are distributed to counties for use by school districts. This revenue includes dollars from the state oil and gas gross production tax, the coal severance tax, and the coal conversion tax. In addition, federal money is distributed to certain school districts under other special federal programs.

1981-82 Interim Study

A legislative study of the foundation aid program was undertaken by the 1981-82 interim Educational Finance Committee. The per-pupil foundation aid formula was criticized for not adequately equalizing educational opportunities. It was noted that similar sized school districts with similar profiles in terms of assessed property valuations levy widely disparate millages. The per-pupil based formula was criticized as favoring low cost school districts which provide minimum course and program offerings staffed by the lowest paid teachers and staff while proportionately penalizing high cost, high valuation school districts. Critics of the formula also pointed out that the 20-mill equalization factor is inadequate because many low cost, low valuation school districts operate their school programs relying almost solely on state aid payments with little or no local property taxes. It was reported that the present weighting factors, which are designed to account for differing costs associated with the operation of different types and sizes of schools, are no longer reflective of cost data compiled by the Superintendent of Public Instruction.

The 1981-82 interim committee focused on a bill draft to implement a "70-30 concept" for the state funding of schools. The basic premise of the bill draft was to require all schools to make an equalized local tax effort and commitment to the funding of their school programs. School payments under the "70-30 concept" would be based on a school district's individual adjusted cost of education rather than on a per-pupil basis. Each school district would have been required to raise an equalized local share of 30 percent of the total statewide cost of education. Through the use of this equalization mechanism, the 70-30 concept bill draft sought to treat school districts with differing costs and property valuation profiles in a fairer manner by taking into account the essential factors relating to equalization, district educational costs, and assessed property valuations. The bill draft was deadlocked in the committee by an eight to eight tie vote.

The committee also briefly considered a classroom unit funding formula. Under the classroom unit funding formula, payments to school districts would be calculated pursuant to the number of classroom units within the district. The committee did not have sufficient time to consider adequately the classroom unit funding approach. Therefore, the committee made no recommendations for altering the existing foundation aid formula.

Foundation Aid Proposals

The committee was informed that the school aid weighting factors have not been adjusted for a number of years. Representatives of the Superintendent of Public Instruction provided a history of the cost of education ratios applicable to a number of different sized school districts. That summary is shown at the end of this report.

There were no recommendations to adjust the foundation aid weighting factors. A representative of the North Dakota School Study Council, whose membership is comprised of the state's largest school districts, reported that more than one-half of all school districts are satisfied with the current weighting factors.

It was agreed that the very smallest schools need the beneift of a higher weighting factor if they are to

survive. The North Dakota Association of School Administrators surveyed its membership and reported that 133 responding school districts favor the present foundation aid formula while five school districts indicated a preference for the classroom unit funding concept. One hundred twelve of the responding school districts favored leaving the weighting factors as they are and 34 districts favored various changes. Finally, it was reported that the 1.7 weighting factor for the smallest high schools costs the state between $1,400,000 and $2,000,000 per biennium which was not thought to be a great sum relative to the entire cost of the foundation aid program.

The committee considered recommendations to increase the state per-pupil payments to $1,470 for the 1985-86 school year and to $1,450 for the 1986-87 school year, to increase the foundation aid equalization deduct to 40 mills and distribute the resulting "savings" to school districts on a flat grant basis of $180 per pupil in average daily membership, and to provide additional payments to school districts which levy a millage in excess of the statewide average.

The recommendation to increase the equalization deduct to 40 mills was by far the most controversial. The North Dakota Association of School Administrators reported that a survey of its members indicated that 102 responding school districts opposed an increase in the equalization deduct while 44 responding school districts favored such an increase. Representatives from an organization called Small Organized Schools also opposed any increase in the equalization deduct or adjustment to the weighting factors. Several other school superintendents testified against the recommendation to increase the equalization deduct.

The strongest opposition to the proposed increase in the equalization deduct came from those persons representing smaller sized school districts. Data was presented to the committee showing that the smallest sized school districts raise the most local property tax dollars per student. It was repeatedly stated that the equalization deduct seeks to equalize educational opportunity by focusing on local property valuation rather than actual dollar income. It was suggested that the smallest school districts generally have the highest property valuation per student and raise more local dollars but also have the least variance in educational programs available to their students and offer less equal educational opportunities. Therefore, by increasing the equalization deduct the smallest school districts with the highest property valuations and with the poorest educational programs would receive even fewer state dollars. Finally, it was suggested that rather than increasing the equalization deduct it should be eliminated. Statistics provided to the committee indicated that state and local revenue produced from income and property taxes is approximately equal when comparing the smallest and largest school districts. It was suggested that the committee and Legislative Assembly should recognize that taxpayers in small school districts are carrying approximately the same financial burden as taxpayers in large school districts. Therefore, any proposed adjustments to the foundation aid program should be carefully considered.

The excess mill levy grant concept would provide school districts levying more than 108 mills to receive a $10 per-pupil payment for every 10 mills levied in excess of the qualifying levy up to a maximum payment of $50 per pupil. Information from representatives of the Superintendent of Public Instruction indicated there are 37 school districts levying between 118 and 128 mills, 12 school districts levying between 128 and 138 mills, 11 school districts levying between 138 and 148 mills, seven school districts levying between 148 and 158 mills, and eight school districts levying more than 158 mills. Therefore, a total of 75 school districts would be eligible to receive state funds under the excess mill levy grant proposal. Again it was questioned why education equalization should not be based on the dollars per student actually raised by a school district rather than the number of mills levied. It was also noted that smaller school districts need a 55 percent voter majority to pass excess mill levies, and it is therefore more difficult to raise taxes compared to large school districts which need only a simple majority to impose excess millages. Finally, it was suggested that the school foundation aid program is complex enough as it is without adding new variations to the formula.

The committee also considered recommendations from the North Dakota Association of School Administrators to increase per-pupil payments to $1,525 for the first year and $1,595 for the second year. It was stated that schools will need this amount of state aid to maintain current programs without making any improvements in those programs. It was noted that state payments at this level would still not reimburse local school districts for even 50 percent, much less than 70 percent, of their costs of education. The recommended per-pupil foundation aid payments of $1,525 and $1,595 would require a state appropriation for the 1985-87 biennium of $368,299,720 — more than a 17 percent increase over the 1983-85 biennial appropriation of $313,045,948.

The committee also considered and rejected a proposal to recommend two separate foundation aid bills with one of those bills addressing school payments for the 1985-86 school year only and the other bill addressing payments for the 1986-87 school year only. The rationale for this proposal was to encourage the Legislative Assembly to determine the first year's school aid payments early during the legislative session so that school districts could plan their budgets for that school year accordingly and not be forced into the mass nonrenewal of teachers which may occur otherwise. Opposition to the proposal noted that nothing guaranteed the timing, much less the passage, of the bill and that one reason the school aid bill is usually passed late in the session by the Legislative Assembly is the importance of obtaining accurate economic forecasts.

The committee also rejected a proposal to require the Office of Management and Budget to transfer electronically state aid payments to schools. The Office of Management and Budget testified that such transfers would be possible but that approximately $100,000 in general fund interest per biennium would be lost. Representatives of the Superintendent of Public Instruction reported that payments to out-of-state school districts receiving North Dakota tuition payments could not be made electronically through the Bank of North Dakota. It was also noted that many small North Dakota banks are not technologically equipped to handle the electronic transfer of such funds.

School District Revenue Caps

The 1983 Legislative Assembly passed a measure prohibiting school boards from increasing school district revenue by more than 18 percent per year. The committee received testimony regarding problems that have arisen with regard to the 18 percent school district revenue cap. The superintendent of Linton Public Schools testified that property valuation in his district almost doubled a year ago due to the completed construction of a gas pipeline. School taxes were thereafter decreased from 127.07 mills to 86.56 mills for the 1983-84 school year. Since the newly imposed cap is based on revenue rather than the total number of mills levied, the Linton School District and other districts do not receive additional revenue from new taxable valuation. Moreover the 18 percent revenue increase is not sufficient in the Linton School District to offset the increased equalization deduct, which is to be subtracted from the district's 1984-85 school foundation aid payments. Superintendents from other school districts testified their districts may experience the same problem. The committee considered a bill draft which permitted school districts whose total assessed valuation of property increased 20 percent or more over a one-year period and which would as a result receive less in state foundation aid payments because of the equalization deduct to levy without a vote by school district electors up to 25 percent more in dollars than was levied the prior year up to a general fund levy of 70 mills. The additional levy could not be imposed for more than two years and the total amount of revenue generated in excess of the 18 percent increase which is otherwise permitted by law may not exceed the amount of state aid payments lost as a result of applying the state equalization deduct to the increased assessed valuation in the districts.

It was suggested that the need for this type of bill draft illustrates the problems which result from state limitations placed on the authority of school boards to raise local taxes. It was therefore suggested that school boards be given the local control they desire by giving them authority for unlimited mill levies. A motion to amend the bill draft accordingly was defeated.

Transportation Payments

The committee studied the current formula for school transportation payments. A fundamental criticism leveled against the current formula is that it tends to encourage school districts to purchase unnecessarily large buses with which to transport their students since state payments are so much higher for those larger buses. Another major concern regarding the transportation reimbursement formula voiced by the committee was that some school districts receive state payments in an amount which exceeds their total transportation costs. A representative of the North Dakota Association of School Administrators said this may be true for those years during which certain districts have not purchased schoolbuses. Since districts do not depreciate the cost of bus purchases over a number of years the cost is reported only for the year in which the buses are purchased.

The committee considered two bill drafts dealing with the transportation reimbursement formula. The first bill draft reimbursed school districts based on the number of students they transported and number of miles traveled. The bill draft compensated districts at the level of 49 cents per mile for schoolbuses transporting students living outside the incorporated limits of a city the school in which the student is enrolled is located. The bill draft contained no funding distinction in the per-pupil per-mile portion of the allocation formula for smaller buses or larger buses. In addition to this allocation to districts based on the number of students transported per mile, the new formula contained a student density-based grant for distributing funds. This part of the formula provided that in addition to per-pupil per-mile payments districts are also entitled to an annual grant for each student transported based on the number of students each district has compared to the total square mileage area of the district. Under the formula, the number of transported students for which a district would be entitled to compensation would be calculated by dividing the number of transported students by the number of square miles in the school district. Finally, the bill draft allowed school districts which transport students distances which exceed by 10 percent or more the state average miles traveled per student to apply to the Superintendent of Public Instruction for supplementary schoolbus transportation funds.

The committee also considered a bill draft which provided block grant type funding to school districts. The bill draft reimbursed school districts based on their total transportation costs regardless of the number of miles of transportation provided by the district, the size of schoolbuses utilized by the school district, or the number of students transported by the school district. The bill draft reimbursed school districts 70 percent of their transportation costs and therefore required school districts to be responsible for 30 percent of those transportation costs.

The committee focused its attention primarily on the second of these two bill drafts. The director of information and research from the office of the Superintendent of Public Instruction provided information to the committee which indicated that a state reimbursement level of 90 percent of local transportation costs would cost the state approximately $19,100,000 per year or $500,000 more than the current transportation formula payments. It was noted that the average school district receives state payments equaling almost 90 percent of their transportation costs. The committee therefore amended the bill draft to provide reimbursement of 85 percent of school district transportation costs.

Some committee members expressed approval of the bill draft citing its simplicity, the fact that districts could not receive more in state funds than their actual costs, and the fact that all districts would be financially responsible for a known portion of their total transportation costs. Committee members opposed to the bill draft expressed satisfaction with the present formula.

Tuition Payments

The committee reviewed the current school district tuition payment formula and heard testimony recommending changes to that formula.

The payment of tuition by one school district educating its pupils in another school district is addressed by North Dakota Century Code Section 15-40.2-03. That section reflects the legislative intent that school districts educating pupils in other school districts be required to pay the full cost of education.

The costs of education are determined on the basis of a district's average daily membership and its annual expenditures from the general fund and all special funds to calculate average current operating expenses. That section of law also requires that the statewide total of all school districts' annual expenditures from sinking and interest funds, plus double the statewide total of all school districts' annual tax receipts for the building funds, including any amounts expended from school districts' general funds for capital outlay, divided by the average daily membership of the state must be added to the current operating expenses of the districts educating pupils from other districts. The major concern initially voiced by school districts which are sending their children to other school districts for educational purposes was that portion of the law which requires a doubling of the statewide average costs for school districts' capital outlay.

Section 15-40.2-03 was amended by the 1969 Legislative Assembly to provide the double capital outlay requirement. The apparent reason for doubling the statewide capital outlay costs for tuition payment purposes was to ensure that school districts which do not offer high school or elementary school pay their share of educational costs for their children attending school in another district. The double statewide capital outlay provisions in the tuition formula apparently came about as a compromise by persons from school districts without school plants who apparently supported the idea of doubling the capital outlay costs rather than financing their own capital construction costs involved in a new building. At that time school districts were reportedly willing to pay double the statewide costs of capital outlay rather than finance their own school facilities.

Representatives from graded elementary school districts in Ward County proposed the tuition payment formula be amended to eliminate the doubling of statewide district capital outlay costs. It was reported that approximately 200 high school students residing in graded elementary districts are attending school at Minot. It was indicated that those graded elementary districts are willing to pay the full cost of education but questioned whether doubling the statewide capital outlay costs is appropriate. Testimony indicated that the 1983-84 doubled statewide average cost for capital construction was $314.50 per pupil. Opponents of the double capital outlay costs portion of the formula testified that graded elementary districts are already levying very high property taxes to pay their high school tuition costs. It was testified that the graded elementary Bell School District is levying 200.12 mills and 113.8 of those mills are for high school tuition payments. A reduction to the single capital outlay costs would reduce that school districts' levy by 14 or 15 mills which was said to be a critical taxing difference.

Representatives of the Superintendent of Public Instruction said the state-computed cost of education does not include capital outlay costs but only those educational costs permitted by the foundation aid law. Representatives of the Superintendent of Public Instruction also suggested that school districts could be held responsible to determine their actual costs for capital outlay in order to determine school district cost for secondary education tuition purposes.

Some committee members questioned why a graded elementary school district would not elect to join an adjacent high school district if high school tuition payments are becoming too burdensome. Proponents of the doubling of capital outlay costs provision reported that tuition-paid students receive the benefit of many years of prior school district purchases and building construction which have either been paid for or are being paid for by the receiving school districts. The proponents indicated the doubling of capital outlay costs basically establishes a fair rental for the recieving school districts space, buildings, and equipment. Finally, it was suggested that receiving school districts should actually receive a much higher payment for educating students from other school districts. It was proposed that the law be amended to establish tuition on a fair rental basis of investments, which would at least double the payments for elementary students, triple the payments for secondary school students, increase by five times the payments for vocational education students, and increase by six times the payments for special education students.

Educational Excellence Programs

The committee considered a bill draft concerning recommendations to provide state payments in addition to the foundation aid program payments to school districts to encourage movement toward and the maintenance of educational excellence.

The North Dakota Council of School Administrators recommended a bill draft for a plan for partnerships in educational excellence. The partnerships in educational excellence program would provide state funds to participating school districts that elect to implement a program or programs designed to address at least one of six educational excellence program areas targeted for improvement. The six educational excellence program areas addressed by the proposal are teacher performance-based compensation, student time on task, relationships between schools and the business community, in-service education programs, academic school curricula, and the use of computer technology by schools.

It was submitted by a representative of the North Dakota Council of School Administrators that the program would permit a large degree of local control over the specific areas on which a school district might wish to concentrate its attention. The Superintendent of Public Instruction would be required to sponsor a state conference on each of the six educational excellence themes. Participating school districts would be required to attend one or more of those conferences and thereafter plan and implement a program addressing at least one of those program areas. School districts would then be eligible to receive an amount of state funds equal to $35 per weighted student unit and average daily membership as calculated for the school district's foundation aid payment. The state funds could then be used to implement local proposals approved by the Superintendent of Public Instruction.

Committee members expressed concern that the program may not make sufficient money available for meaningful participation by the very smallest school districts with low enrollments. The bill draft was therefore amended to provide a minimum payment to school districts of $3,150 for the planning and implementation of an approved school district proposal. The bill draft required a state general fund appropriation of $4,955,930 for the 1985-87 biennium.

Although not necessarily opposed to the partner-

ships in educational excellence program concept, some committee members did express a concern that the $5 million appropriation necessary to fund the program might be better spent by increasing foundation aid payments by a proportionate amount. It was also suggested that by increasing foundation aid payments, many of the goals of the partnerships in educational excellence program could be achieved.

School administrators voiced their concern that the basic foundation aid program must not suffer as a result of state appropriations to any educational excellence programs. Therefore, it was suggested that any program to encourage the improvement of educational excellence must be funded over and above appropriate increases in the foundation aid payments.

Recommendations

The committee recommends House Bill No. 1048 to increase the per-pupil foundation aid payments to $1,525 for the 1985-86 school year and $1,595 for the 1986-87 school year. The proposed payments will cost an estimated $368,299,720 for the 1985-87 biennium compared to payments of approximately $313,045,948 for the 1983-85 biennium. The committee declined to adopt the recommendations to increase the equalization deduct and to provide excess mill levy grants. The committee makes no recommendation for legislation to adjust the foundation aid weighting factors. House Bill No. 1048 also amends the special education reimbursement formula as is discussed later in this report.

The committee recommends House Bill No. 1050 to permit school districts the taxable valuation of which has increased 20 percent or more over a one-year period and which would as a result of the 20-mill equalization deduct receive less in state foundation aid payments to levy for two years without a vote any number of mills necessary to offset the foundation aid payments which would otherwise be lost.

The committee recommends House Bill No. 1049 to eliminate the current transportation payment formula and replace it with a block grant payment to reimburse school districts for 85 percent of their transportation costs. The estimated cost of this bill is $18,600,000 per year, approximately the same amount as is spent under the current formula.

The committee makes no recommendation for legislation to amend the tuition payment formula.

The committee recommends House Bill No. 1051 to establish a partnerships in educational excellence program to provide state payments to participating school districts which send representatives to attend educational excellence conferences sponsored by the Superintendent of Public Instruction and then plan and implement a local educational excellence program approved by the Superintendent of Public Instruction. School districts would be paid a minimum of $3,150 for the planning and implementation of a local educational excellence program or an amount equal to $35 per weighted student unit in average daily membership as calculated by each school district's state foundation aid payment, whichever amount is greater. The bill requires a state general fund appropriation of $4,955,930 for the 1985-87 biennium.

SPECIAL EDUCATION SERVICES

Background

On November 29, 1975, the 94th Congress enacted Public Law No. 94-142, the "Education for all Handicapped Children Act of 1975." The Act provides a program of assistance to states for the education of handicapped children. The terms of the Act apply to each of the states and trust territories of the United States. To qualify for grants under the Act, each state must meet certain eligibility requirements outlined in the Act.

The purpose of the Act is to assure that all handicapped children receive a free appropriate public education that emphasizes special education and related services designed to meet their unique needs; to assure that the rights of handicapped children, parents, and guardians are protected; to assist states to provide educaion; and to assess and assure effectiveness of educational efforts. The Act therefore requires participating states to identify and provide educational services to children who may be handicapped, to diagnose their special education needs, and to establish and review individual educational plans for those children in an attempt to educate those children in regular classrooms to the greatest extent possible.

North Dakota's participation in the Act has encouraged the establishment of multidistrict special education units. State law permits school districts to participate cooperatively in multidistrict special education units and also permits them to change their affiliations with multidistrict special education units on a yearly basis or to establish their own special education units. It was reported to the committee by representatives of the Superintendent of Public Instruction that the superintendent does not have a great deal of control over the local ogranization of multidistrict special education units and that if a new special education unit is proposed which provides for sufficient tax levy capability to sustain its operations, approval is given as a matter of course.

The committee focused its attention in the area of special education on the percentage of local costs being reimbursed by the state and the method of delivering special education services especially to the low-incidience type of handicapped students.

Boarding Care and Tuition Costs

The assistant superintendent for special education testified that children with recently identified and complex handicaps often may not receive appropriate educational services within the state. It was testified that there continues to be a steadily increasing pressure to place such children in out-of-state facilities at great comparative costs to local school districts.

The committee discusssed defeated 1983 House Bill No. 1570 which would have made the state financially responsible for 100 percent of the costs of elementary and secondary school students placed outside their districts of residence by social service agencies and courts. Students placed outside their school districts of residence are generally in need of either special education services or services supplementary to those generally provided to other public school students. It was reported that the current practice is for social service agencies and courts to place such children out of their districts of residence for various social reasons and to send a blank check along with them whereby such students' districts of residence are forced to pay the open-ended bill. This practice constitutes a budgetary problem related to both

special education and educational finance in general.

The committee also focused on the boarding care costs of students placed oustide their school districts of residence. Representatives from the Department of Human Services testified that the boarding care costs for such students are approximately $1,200,000 over the biennium for both in-state and out-of-state placements. The Department of Human Services is currently reimbursing school districts for 70 percent of the costs of boarding care with local school districts being held responsible for the remaining 30 percent. Representatives from the Department of Human Services indicated the state's percentage of reimbursement may be increased during the second year of the biennium if adequate funds are available. The 1983 Legislative Assembly appropriated $792,948 to the Department of Human Services for the administration of the boarding care program.

Prior to 1983 legislative action the Department of Human Services paid 100 percent of the room and board care costs for children placed by local school districts in congregate care outside the state. Local school districts were responsible to pay 40 percent of the costs of children who were placed in boarding care facilities within the state with the Superintendent of Public Instruction paying approximately 60 percent of those costs. Districts were therefore financially rewarded for placing children in out-of-state facilities. The 1983 Legislative Assembly changed the system for boarding care reimbursement so that the Department of Human Services is solely responsible for making those reimbursements and no distinction is made on whether a student is placed in state or out of state. A 1983 bill that would have required the Department of Human Services to pay 100 percent of the costs of room and board for both in-state and out-of-state boarding care placements was not approved.

Current law requires school districts to remain responsible for the cost of a child's education when that child is placed in a facility outside the school district of residence. The state does not become financially responsible until it is determined that the child's parents were not residents of the school district and a further determination is made that the child qualifies as a state responsible child. A major problem that was reported is that the Superintendent of Public Instruction does not have a good system to determine the residence of a student's parents. Special education personnel reported that people are increasingly moving to areas where special education services are available and that the responsibility for providing those services should become more of a state responsibility because those people generally do not bring a tax base valuation to the special education service unit.

The state director of special education from the office of the Superintendent of Public Instruction reported that the state currently pays approximately 33 percent of the total cost of special education. Total costs of all special education services currently being provided is approximately $60,600,000 over the biennium. The federal government pays approximately seven to eight percent of those costs or $5 million per biennium while the state pays just over one-third of those costs or $21,500,000 over the biennium. The balance is paid by local school districts. It was urged that the state increase its financial responsibility for a much larger percentage of the total costs of local special education programming.

Representatives of the Superintendent of Public Instruction recommended that school districts continue to receive 70 percent of the costs of room and board care paid on behalf of handicapped children placed in facilities outside their school districts of residence. They also recommended that the state be financially responsible for 100 percent of the costs of children who are placed by a social service agency or a court to stay for any prescribed period of time at a foster home, state special education facility, or home maintained by any nonprofit corporation. It was also recommended that any special education costs necessary for children placed in such facilities be paid directly to the receiving school district from funds appropriated by the Legislative Assembly to the foundation aid program.

Special Education Personnel Costs

The committee considered a bill draft requiring the state to reimburse local school districts for 60 percent of their special education personnel costs. The state currently reimburses local special education units for approximately one-third of their costs. The state director of special education testified that the 60 percent reimbursement level in the bill draft would require a state appropriation of approximately $50 million per biennium compared to the 1983-85 biennial appropriation of $21,200,000. It was testified that the local contribution toward special education programs is steadily increasing because the legal rights of handicapped children to receive special education services are being expanded, which leaves school districts with no choice but to provide those services. Although the cost of special education programs continues to rise the percentage of state and federal reimbursement for those costs has not kept pace with the increase.

Current law provides that school districts may be reimbursed for special education costs in an amount not exceeding three times the state average per-pupil cost of education computed by the Superintendent of Public Instruction for the previous school year for each child for instruction and four times the state average per-pupil cost of education for the costs of related special education services. The state director of special education services reported the maximum reimbursement for special education costs permitted by law would therefore amount to approximately $9,000 per student per year. The state appropriation for special education reimbursements has never approached that maximum reimbursement level. The $9,000 per student per year reimbursement would require an appropriation of approximtely $36 million, while the 1983-85 biennial appropriation for special education services reimbursement was $21,200,000.

Delivery of Special Education Services

The state director of special education reviewed for the committee the history of delivering special education services in North Dakota. There are presently 32 special education units operating in North Dakota under single and multidistrict organizational plans. He testified that all handicapped children in North Dakota are not receiving an equal and appropriate education. He testified that children with severe or multiple handicaps specifically are frequently receiving either limited educational services or services in environments which are more restrictive than warranted by their physical conditions. A number of factors

were cited which contribute to the inequity in special education services. The most prominent factors reported as contributing toward the inequity in special education services are as follows:

1. A failure on the part of local school districts and special education units to combine voluntarily their resources to provide comprehensive services to low-incidence handicapped children.
2. A reluctance to establish cooperative programs for the handicapped.
3. State-supported financial incentives for the placement of handicapped children in private and out-of-state facilities rather than in-state facilities.
4. Small percentages of reimbursements for special education costs being provided by the state and federal governments with a proportionately larger and increasing financial burden placed on local school districts.
5. The lack of congregate care facilities in the state for educational purposes.
6. The proliferation of many small special education units which has contributed to programming inefficiency and failure to provide a full range of special education services especially for students with low-incidence handicaps.

A nationwide survey conducted by the National Council for Exceptional Children indicates that the minimum enrollment for an effective special education unit should be at least 4,500 students. It was reported that below this number there begins a dramatic reduction in services available for handicapped children.

The state director of special education also indicated that a lack of cooperation and friction between school districts has resulted in a continuous realignment of schools with different special education units. This trend tends to have a negative effect on the long-term program planning and continuity in educational services provided.

The committee heard testimony which indicated the cost of special education will continue to increase and the growing number of special education districts in the state will make the delivery of those services more and more inefficient. It was recommended by the state director of special education and others that a pilot program be established for the regional delivery of special education services especially for students with low-incidence handicaps. One of the primary advantages of the regional delivery of special education services cited was the ability to spread high special education costs over a larger population area and therefore make it more cost efficient on a per capita basis.

The committee therefore considered a bill draft establishing a two-year pilot program designed to coordinate and supplement the delivery of special education services on a regional basis for school age children with severe and profound handicaps. The pilot program would serve no fewer than 20,000 school age children and all school districts within the pilot program would be required to participate. The Superintendent of Public Instruction would be authorized to organize a pilot program board responsible for general administration of the program. The bill draft provided the pilot program area board with authority to assess each school district within its jurisdiction an amount not to exceed two mills on the property valuation of each school district within the area. The state director of special education estimated the biennial budget of the pilot program to be approximately $400,000. It was recommended that the state pay approximately $100,000 per year, local school districts approximately $50,000 per year, and that $50,000 per year in federal funds could be used. If 20,000 students participate in the program, the local school district contribution would amount to approximately $2.50 per pupil per year from each school district.

Committee members questioned whether the pilot program concept would not duplicate services already being provided and perhaps create a conflict of authority between existing special education unit boards and the regional board with the resulting loss of local control. Proponents of the regional delivery concept urged that the program should be designed to provide services to existing boards and not have administrative authority over them. The pilot program was therefore designed in such a manner to assist special education units in providing services which may not now exist in order to help serve multiply handicapped children nearer their homes. The state director of special education indicated the goal of the program should be to ensure that similar special education services are provided statewide and to equalize the level of special education expertise which is available to multiply handicapped children.

Postsecondary Special Education Program

The committee received testimony concerning a special education program proposal submitted by the North Dakota State University-Bottineau and the Bottineau Peace Garden Special Education Cooperative. The proposal requested federal funds to implement a postsecondary special education program. The committee was advised that no state funds would be involved in the implementation of this program and that the program would provide specially designed courses reflecting the needs and abilities of special education students. The program proposal's intent is that special education students be mainstreamed into a regular college curriculum which permits the successful participation through tutorial assistance based on individual levels of ability. The program proposal would lead to a two-year college associate's degree conferred by the North Dakota State University-Bottineau. It was indicated that the program if implemented would be the first of its kind in the country.

Recommendations

The committee recommends Senate Bill No. 2062 to require the Department of Human Services to reimburse school districts for 70 percent of the costs of room and board paid on behalf of handicapped children placed in facilities outside their school districts of residence for special education services not available within their school districts of residence. The reimbursements would be made regardless of whether a child has been placed in a facility within the state or outside the state. The 70 percent reimbursement level is what the department is currently following.

The committee recommends Senate Bill No. 2063 to make the state financially responsible for the costs of a child who has been ordered by a court or social service agency to stay for any prescribed period of time at a state special education facility, foster home, or a home maintained by any nonprofit corporation.

The tuition costs must be paid to the receiving school district from state funds and all excess educational costs related to a child's special education must also be paid directly to the receiving school district from state funds. The bill also clarifies which school district is the legal residence for children who are placed voluntarily or by a social service agency in facilities outside their school districts of residence for special education services.

The committee recommends House Bill No. 1048 to amend the special education reimbursement formula to provide reimbursements to school districts in an amount equal to 60 percent of the salary and fringe benefit costs paid the previous year by the school for personnel employed to deliver special education instructional services and an amount not to exceed four times the state average per-pupil cost of education for the cost of related special education services. The estimated appropriation necessary to fund this portion of the bill is $50 million for the 1985-87 biennium compared to the 1983-85 special education appropriation of approximately $21,200,000. This represents a biennial increase of almost $29,000,000.

The committee recommends Senate Bill No. 2064 to establish a special education area coordinator pilot program. The bill requires the Superintendent of Public Instruction to establish the boundaries of the special education pilot program in such a manner to ensure that no fewer than 20,000 school age children reside within the program area to be served. The special education area coordinator is responsible for facilitating the provision of special education services through existing cooperative special education units to all school age children residing in the program area who have severe and profound handicaps. The pilot program would be in effect for the 1985-86 and 1986-87 school years. The special education area pilot program board would be authorized to assess and collect from each school district within its boundaries an amount not to exceed two mills on the property valuation in each school district and the total of all school district assessments made by the coordinating board may not exceed 25 percent of the coordinating board's annual program budget. The bill contains a general fund appropriation of $200,000 for the biennium and states the intent that $100,000 in federal special education funds also be used to fund the pilot program.

The committee recommends Senate Concurrent Resolution No. 4004 urging the United States Department of Education to approve the joint application submitted by the North Dakota State University-Bottineau and the Bottineau Peace Garden Special Education Cooperative for federal funds to implement a program designed to train educable handicapped persons with marketable job skills in postsecondary educational institutions.

SUMMARY OF COST OF EDUCATION RATIOS

The ratios are calculated by dividing the statewide average cost per pupil for each of the enrollment categories by the statewide average cost per pupil for all pupils. The ratios reflect only the amount that was spent and does not reflect the need for new programs or enhancements to existing programs. The ratios reflect cost economics that were instituted by schools to the extent that the ratios did not increase as dramatically as most cost indices.

COST OF EDUCATION RATIOS

Kind of District	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	Current Weighting Factor
Kindergarten	.55	.53	.52	.55	.53	.52	.54	.55		.50
Rural (1-8)	1.23	1.19	1.38	1.11	1.13	1.16	1.68*	1.09		1.30
Elementary (1-6) 100	1.07	1.03	1.05	1.11	1.12	1.15	1.13	1.17		1.00
Elementary (1-6) 100-999	.93	.95	.96	.95	.94	.94	.92	.92		.90
Elementary (1-6) 1,000	.96	.96	.95	.95	.94	.94	.93	.93		.95
Grades 7 and 8	.95	.97	.99	1.04	1.03	1.03	1.04	1.06		1.00
High school (9-12)										
550 or more pupils	1.10	1.13	1.10	1.08	1.10	1.08	1.09	1.11	1.11	1.20
150-549	1.03	1.02	1.02	1.01	1.00	1.00	1.00	1.08	1.11	1.32
75-149	1.07	1.05	1.06	1.04	1.04	1.05	1.07	1.10	1.14	1.40
74 or less	1.28	1.28	1.25	1.26	1.23	1.27	1.30	1.31	1.38	1.70
Average cost per pupil	$938	$1,097	$1,212	$1,376	$1,544	$1,741	$1,957	$2,392	$2,476.82	XXX

* Error in data reporting

EDUCATION "B" COMMITTEE

The Education "B" Committee was assigned two study resolutions. House Concurrent Resolution No. 3077 directed a study of seven distinct subject areas in the field of public education. Two subject areas were assigned to the Education "A" Committee, and five were assigned to the Education "B" Committee. These five subjects were the reorganization, annexation, and dissolution of school districts; the position of county superintendent of schools; minimum high school curriculum and length of school term; the effects on students of nonacademic extracurricular activities and absenteeism; and the duties and responsibilities of elementary and secondary schoolteachers. As part of its study regarding minimum high school curriculum and the length of the school term, the committee studied proposals with goals to generally achieve educational excellence.

House Concurrent Resolution No. 3076 directed a study of the feasibility and desirability of using facilities of public television to make specialized instruction programs available in elementary and secondary schools.

Committee members were Representatives Irven Jacobson (Chairman), Gerald Halmrast, Julie A. Hill, Kenneth Knudson, Charles Linderman, Arthur Melby, Wayne G. Sanstead, Orville Schindler, Steven J. Swiontek, and Clark Williams; and Senators Phillip Berube, Ray David, Raymon E. Holmberg, Joe B. Leibhan, Bonnie Miller Heinrich, William Parker, Curtis N. Peterson, and Malcolm S. Tweten.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

SCHOOL DISTRICT REORGANIZATION, ANNEXATION, AND DISSOLUTION LAWS

Although several improvements were made to North Dakota Century Code (NDCC) Chapter 15-53.1 in regard to school district reorganization, annexation, and dissolution laws by the 1983 Legislative Assembly, there remain structural and substantive problems within that chapter. The chapter remains confusing as a result of conflicting language regarding the respective roles that the processes of reorganization, annexation, and dissolution should play in school district boundary alterations. In addition, these processes are not subject to clearly defined procedural steps.

Background

The general subject of the alteration of public school district boundaries and organizational structure was first addressed by the Legislative Assembly in 1890. The First Legislative Assembly enacted Senate Bill No. 143, which provided for a uniform system of public schools in North Dakota and contained provisions for the alteration of boundaries of existing school districts. This early law provided that school district boundary lines could be changed by the board of county commissioners and the county superintendent of schools upon the receipt of a petition signed by at least one-third of the voters residing in each affected school district.

The Legislative Assembly enacted the first comprehensive statutes relating to various types of school district boundary alterations in 1947. House Bill No. 43 in that year was the result of an interim study conducted by the Legislative Research Committee during the first biennium of its existence. In its report to the 1947 Legislative Assembly, the committee stated that the recommended bill closely resembled a school district reorganization law adopted in Washington in 1941. It is clear from the report of the Legislative Research Committee that the overriding consideration in its proposal of a new school district reorganization chapter was a policy for discouragement of the continuance of many small school district units. As the report to the 1947 Legislative Assembly stated:

> Due to the inadequacy of the existing school structure in North Dakota as is readily recognizable by small units, inadequately financed operating schools and by still larger units and their inability to raise sufficient operating funds by taxation and through the state aid program, reorganization of school districts under this Act would provide a more nearly equalized educational opportunity for pupils of the common schools, a higher degree of uniformity of school tax rates among districts, and wiser use of public funds expended for the support of the common school system. (See Report of the Legislative Research Committee to the 30th Legislative Assembly, page 6, December 15, 1946.)

The school district reorganization program proposed in the recommended bill in 1947 provided for county committees consisting of between three and five members. The county committees were given responsibility for the formulation of reorganization plans and upon approval of such plans by a "state committee," county superintendents of schools were to then call a special election of the voters residing in the territory of the proposed new district. If a majority of the votes cast were in favor of the formation of the district, the county superintendent would proceed to organize and establish the new school district.

Chapter 15-53 of the North Dakota Revised Code was entitled "Reorganization of School Districts" and it considered any method of changing school district boundaries to be a "reorganization" of the involved districts. The definition of school district reorganization therefore included within its scope the process of "annexation," by referring to the "transfer to an established district of a part of the territory of one or more districts," and the process of "dissolution," by express reference. The 1971 Legislative Assembly replaced Chapter 15-53 with a new Chapter 15-53.1.

The most significant departure made in 1971 from the prior law was in the intended separation made in Chapter 15-53.1 of the processes of "reorganization," "annexation," and "dissolution" of public school districts. The Legislative Assembly separated the new chapter into four separate articles, with the first including provisions to be generally applicable throughout the chapter, the second applying to annexation, the third applying to reorganization, and the fourth applying to dissolution.

It is evident upon a reading of the 1971 law that the Legislative Assembly intended to treat the processes of school district annexation and dissolution as separate and additional methods for altering school district boundaries other than the process of "reorgan-

ization." Presumably, therefore, as the annexation and dissolution articles were not applicable to the reorganization article, there would be a distinction in the definition between the three processes through which school district boundaries could be changed. However, this was not the case.

Although the initial reorganization law considered all forms of school district boundary alteration and organizational changes to be "school district reorganizations," this definition was not modified in 1971, when the Legislative Assembly intended to separate the processes of reorganization, annexation and dissolution as three different means through which district boundaries could be changed.

The 1983 Legislative Assembly approved House Bill No. 1458 which, among other things, overhauled the definitions section of Chapter 15-53.1. The term "annexation" was defined to mean "an alteration of the boundaries of school districts through the attachment of territory from one existing operating school district to another existing operating school district." The bill also provided a definition for the term "dissolution of school districts," a feature which had been absent in Chapter 15-53.1. The 1983 bill defined "dissolution of school districts" to mean "the process through which an existing operating school district ceases its active functions in its present organizational form and the district's territory is attached to one or more adjoining existing operating school districts." The bill also redefined "reorganization of school districts" to mean "the formation of a new school district by either the unification of two or more existing operating districts into one larger district or separation of territory from one or more operating districts to create one or more new operating districts."

Continuing Problems

A continuing problem in the structure of Chapter 15-53.1 is the composition and operation of county committees which are provided for in Sections 15-53.1-11 through 15-53.1-17. Because all of those sections are included in Article III of Chapter 15-53.1, which is on reorganization, they therefore purportedly refer only to school district reorganizations. In actuality, however, these same county committees are involved in the procedures provided for in Article II, relating to school district annexations, and Article IV, relating to school district dissolutions.

Other difficulties have been experienced in regard to Section 15-53.1-29 which provides that all proposals for the alteration of school district boundaries shall be approved by both the county committee and the state board if in the judgment of the county committee and state board such proposals "constitute an acceptable part of a comprehensive program for the reorganization of school districts of the county." The section would therefore seem to require that annexations cannot be approved unless they constitute an acceptable part of a comprehensive reorganization plan. However, Section 15-53.1-17 of the reorganization article, which sets forth the requirements for comprehensive reorganization plans, does not refer to the annexation article and is therefore technically not applicable to annexations.

A further complication is raised by Section 15-53.1-19 (in the reorganization article) which provides the county committees "from time to time" may submit to the state committee "a plan for the reorganization of one or more districts without awaiting the completion of a comprehensive plan; provided, however, that such plan fits into and becomes an integral part of such comprehensive plan as the county committee is required to prepare." These "mini reorganization plans" are not cross-referenced to any section of the annexation article. It is therefore questionable whether such "mini reorganization plans" would apply to annexations.

An interpretational problem has arisen in consideration of the cross-reference to Section 15-53.1-29 from Section 15-53.1-05. Section 15-53.1-05 requires among other things that annexation proposals meet the requirements of Section 15-53.1-29 relating to the conformance of proposals for school district boundary changes to a "comprehensive program." It is uncertain as to whether the "comprehensive program" referred to in Section 15-53.1-29 is the "comprehensive" plan of Section 15-53.1-17, or whether it is the "mini" plan of reorganization permitted under Section 15-53.1-19. The North Dakota Supreme Court has held that it is Section 15-53.1-19 which is the "mini reorganization plan" referred to in Section 15-53.1-29 in the context of school district annexations.

Testimony

The director of school district reorganization from the office of the Superintendent of Public Instruction testified that existing school district reorganization laws might be improved if completely separate procedures for annexation versus reorganization versus dissolution were established. It was reported that the 1971 Legislative Assembly must have had this intent in mind when it separated the three procedures for altering district boundaries into different articles of the same chapter. It was further indicated that the organization of annexation, reorganization, and dissolution laws under separate procedural processes would provide for greater ease in judicial interpretation of those laws. It is questionable whether the comprehensive reorganization plan currently required by law has any serious application to proposed annexations of school district property. Under existing law, there is confusion over whether proposed annexations must be consistent with the so-called "mini reorganization plan" provided in Section 15-53.1-19 or whether such proposed annexations must be consistent with "comprehensive" reorganization plans provided for in Section 15-53.1-17. It was therefore recommended that the respective procedures for district annexation, reorganization, and dissolution be organized in distinct chapters to separate the requirements.

The committee also discussed the new appeal process for annexation proposals which are denied by county committees. 1983 House Bill No. 1458 amended Section 15-53.1-06 relating to annexation hearings. A new subsection to that section was added to provide a right of appeal from any decision by a county committee or committees regarding annexation proposals. Annexation proposals denied by a county committee may now be appealed to the State Board of Public School Education without the county committee's approval. It was questioned whether this new right of appeal is appropriate. Current law permits that if more than one county is involved in an annexation proposal it only takes the approval of one county committee to send the proposal to the state committee. Therefore it was suggested that if none of the county

committees involved in such an annexation proposal approves of it, it probably does not warrant further review by the state committee.

The director of school district reorganization voiced his opinion that county committees currently are unable to do a comprehensive job of school district planning because their districts are often located within two or more counties so that each county committee will naturally develop comprehensive plans designed to protect their own interests. It was also noted that annexation proposals generally affect relatively small geographical portions of school districts and county comprehensive plans should not be affected by such minor redistributions of property. It was therefore recommended that county comprehensive reorganization plans be made applicable only to school district reorganizations and not annexation procedures.

An alternative method of planning future school district reorganization discussed by the committee was the use of intermediate area service agencies covering several counties. Such planning could also be undertaken at the state level.

The director of school district reorganization recommended that the provisions for the use of "mini reorganization plans" in reorganization proceedings as is provided in Section 15-53.1-19 should be repealed. It was indicated that the use of "mini reorganization plans" is inconsistent with the idea of county comprehensive reorganization plans. It was suggested that if comprehensive planning is desirable, the avoidance of such plans through the use of "mini plans" is not appropriate.

A representative from the North Dakota Education Association and former Superintendent of Public Instruction testified that county comprehensive reorganization plans did serve a meaningful purpose when the school district reorganization laws were first implemented. He reported that county comprehensive reorganization plans were necessary to avoid the haphazard formation of school district boundaries and to ensure that transportation could be provided to newly formed school districts. Other testimony indicated that county comprehensive reorganization plans should be abolished since they no longer accomplish their intended purpose of promoting meaningful school district planning. It was reported that such planning is all but impossible for those school districts which are located in two or more counties.

The committee considered two separate bill drafts regarding revisions to current school district reorganization laws. Several sections of current law which should be applicable to reorganization, annexation, and dissolution of school districts are codified under Article III of Chapter 15-53.1 (reorganization). Technically these sections do not apply to annexation and dissolution because there are not appropriate cross-references to those two articles. Therefore the bill drafts considered by the committee rearranged several of the current general provisions found in Article III to a new chapter of general provisions which are applicable to all three methods of changing school district boundaries.

The bill drafts considered by the committee limited appeals from county committees with respect to proposed annexations to those determinations made only by a single county committee. The bill drafts also made mandatory the county committee comprehensive study of various items which must be addressed in the county committee's comprehensive plan for the reorganizaton of school districts within the county. The bill drafts provided county committees with the responsiblity to dissolve and attach any portion of a school district which has been left out of a school district reorganization plan.

The continued future use of county comprehensive reorganization plans was a basic policy decision addressed by the committee. Both bill drafts eliminated the application of county comprehensive reorganization plans to annexation and dissolution proceedings. At least one school district in the state has territory located in five different counties and the county comprehensive reorganization plan in this instance is of little or no value for planning purposes. The director of school district reorganization testified that if comprehensive school district planning is going to be meaningful it must be done on a more than a single county level. Both bill drafts repealed provisions that permit proportionate tax rates or differentiated levies for agricultural lands, because there are only two school districts that impose differentiated mill levies for agricultural lands.

The bill drafts were identical to each other except one of the drafts provided that the county committee responsible for overseeing school district reorganizations, annexations, and dissolutions would be replaced with an area service agency board. The area service agency board would be responsible to supervise school district boundary changes on an area larger than a single county.

Recommendation

The committee recommends Senate Bill No. 2065 to repeal current school district reorganization, annexation, and dissolution laws and establish four new chapters to the North Dakota Century Code. One chapter addresses general provisions applicable to all three procedures for altering school district boundaries and separate chapters deal specificially with each of those procedures to alter school district boundaries. The bill limits appeals from county committees with respect to annexation proposals to those determinations made only be a single county committee. The bill also makes mandatory the county committee comprehensive study of various items which must be addressed in the county committee's comprehensive plan for the reorganization of school districts within the county. The bill provides county committees with the responsibility to dissolve and attach any portion of a school district which has been left out of a school district reorganization plan.

A table at the end of this report lists the North Dakota Century Code sections proposed in the bill and the derivation of the proposed new sections.

POSITION OF COUNTY SUPERINTENDENT OF SCHOOLS

History

The position of county superintendent of schools was established by the First Legislative Assembly in 1890. Reflecting the essentially rural demographic composition of the state at the time, the county superintendent was given by statute general supervision of the public schools in the county, except in those cities which are organized under special law. The county superintendent was directed to visit each public school at least once a year and was required

during such visits to "carefully observe the condition of the school, the mental and moral instructions given, the methods employed by the teacher in teaching, training, and drill, the teacher's ability and the progress of pupils." Indicating the county superintendent's primary responsibilities as a supervisor over one-room rural schools, the 1890 statue required the superintendent to "advise and direct the teacher in regard to the instruction, classification, government and discipline of the school in the course of study." (emphasis supplied).

As population demographics, and most importantly school district organization, are radically different at the present time than they were even two decades ago, questions have arisen regarding the general role played by county superintendents of schools today.

County Superintendency Report

In January 1983 a 79-page report entitled "The County Superintendency in North Dakota: Analysis and Opinion" was completed by Dr. Richard L. Hill and Ms. Elizabeth Myers of the Department of Educational Administration at the University of North Dakota. The purpose of the study which preceded the issuance of the report was to analyze the work of the county superintendent in North Dakota in as multifaceted a manner as possible. The report, funded by the Superintendent of Public Instruction, proceeds from the given fact that the role of county superintendent of schools in North Dakota has changed progressively, and that with this change "visible administrative responsibilities have diminished."

The study found that the office of county superintendent of schools is named in more than 100 North Dakota Century Code sections. In 45 sections, specific work was prescribed for the county superintendent; in 17 additional instances the law refers to county superintendents and thereby suggests that under certain circumstances, work might be required.

As might be expected, the category of "work initiated or invited" by the county superintendent was found to vary greatly from county to county and from incumbent to incumbent. In some counties, invited and initiated work was extensive and varied; in other counties such work was almost nonexistent.

The report concludes that "the county superintendent performs real work and serves necessary functions; however, the nature, quantity, and legitimacy of that work argue for further attention. Consequently, the investigators recommend that the Legislative Council study the county superintendency during the next interim." The report acknowledges that there can be little generalization made with respect to the practices and roles of all county superintendencies in North Dakota, as some county superintendents were found to serve roles remarkably similar to those of their predecessors 40 or 50 years ago, while others serve counties with few or no one-room rural and graded elementary schools, where all or virtually all of their counties have been organized into high school districts. The authors of the report also conclude that roles of county superintendents serving counties predominantly characterized by high school districts have not evolved over the past few decades in a direction of increased work with high school districts, but rather in a direction of increased work associated with data management generally.

The 1983 Legislative Assembly approved two bills that amended provisions of Title 15 relating to the powers and duties of county superintendents of schools. House Bill No. 1180, introduced at the request of the Superintendent of Public Instruction, repealed six sections which were considered to be no longer applicable to the contemporary role of county superintendents of schools. Senate Bill No. 2192, also introduced at the request of the Superintendent of Public Instruction, amended nine sections relating to duties and powers of county superintendents.

The committee's study of the county superintendency focused upon the role of that office rather than specific duties and powers assigned to the office.

Dr. Richard Hill testified before the committee on several occasions. He reported four options to be taken with regard to the position of county superintendent of schools. The first option is to eliminate the position. The second option is to make no substantive legislative change in the statutorily prescribed duties of county superintendents. A third option would be an expansion of the statutorily prescribed duties of county superintendents. The fourth option would be the establishment of regional service units to replace existing county superintendencies and function with fewer persons as regional administrators than the number which currently serve as county superintendents. He recommended focusing on the fourth option.

Area Service Agencies

Dr. Hill presented a proposal to the committee that the office of county superintendent of schools be abandoned and that area service agencies be created. The proposal recommended that all operating public school districts be required to be a member of one area service agency and that each such agency have a governing board of nine members selected from separate membership districts within the area service agencies and three members selected at large. Each area service agency would provide administrative services, educational services, and special education services to its member school districts. It was recommended that six to 12 agencies be created and that the specific number and configuration of the agencies be determined no later than January 1, 1987, after study by representatives of the Superintendent of Public Instruction. The proposal indicated that agency boundaries should be drawn so that at least 12,000 students are served by each area service agency and no more than 10,000 square miles are incorporated within each agency's boundaries. Agency boundaries should respect school district not county boundaries.

The administrative services envisioned by the proposal would require each area service agency board to hear and decide tuition and student placement appeals as specified by law, to oversee the reorganization, annexation, and dissolution of school districts as specified by statute, to receive and transmit various reports required by law, to perform other requested services such as group purchasing, printing, and machine accounting for school districts, and to perform any other activities required by the Legislative Assembly. The proposal recommended that no less than 40 percent of the state appropriation to each area service agency be spent on educational services. Those services should be addressed to areas such as staff development, curriculum development, and media services. The proposal recommended that special education services would include the receipt and transmittal of various special education reports to the Superintendent of Public Instruction. The propos-

al also recommended that the area service agency board be responsible to arrange the provision of certain special education services for children with "low incidence" handicaps.

The committee heard testimony from several current county superintendents of schools who described their various duties. Those duties include supervising teachers during the school year with biennial performance evaluations, intervening when administrative problems arise, organizing school staff development and inservice training programs for teachers, maintaining a substitute teacher list, administering preschool testing, helping with the development of school district budgets, providing inservice student discipline programs, conducting drug awareness programs, organizing school media center projects, maintaining certain records such as birth dates, serving on county reorganization committees and tuition appeals boards, enforcing compulsory school attendance laws, and completing various school reports as required by law. It was testified that 23 reports are originated in the office of county superintendent of schools and that most of these reports are required by state law. It was also noted that an additional 33 reports are sent to the county superintendent's office for submission directly to the Superintendent of Public Instruction.

The committee considered a bill draft implementing area service agencies. The bill draft required the Superintendent of Public Instruction to establish the boundaries for eight area service agencies no later than January 1, 1987. Every public school district in the state would be required to be a member of one of the eight area service agencies. The area service agencies would be required to provide special education services, administrative services, and educational services. The bill draft also permitted an area service agency to perform other services it deemed appropriate for the school districts within its boundaries. Each area service agency would be governed by a board of directors consisting of nine members elected by the local school boards within the area service agency's territory. Each area service agency would be authorized to assess each school district in its territory a membership fee in an amount not to exceed two mills on the valuation of each school district's property. The bill draft abolished the office of county superintendent of schools as of January 1, 1989. The bill draft did not provide a specific state appropriation, but it was reported that an appropriation equal to $18 per census unit within each area would be required for the biennium.

The committee reviewed various proposals for the organizational structure of area service agencies. Concerns were raised regarding the authority, if any, that area service agencies should have over local school districts. The appropriate number of area service agencies to serve the state was also the topic of a great deal of committee discussion. The president of the North Dakota Association of County Superintendents recommended increasing the number of area service agencies from eight to 20 or 22. The committee also discussed where the boundaries of area service agencies should be drawn. The state director of special education testified that the efficient delivery of special education services for children with low incidence type handicaps must be made on a regional basis. He therefore urged that the delivery of special education services be made on a regional basis even if the educational and administrative services components of the area service agency bill draft were not accepted by the committee.

The committee determined that a great number of questions regarding the cost, size, and services to be provided by area service agencies would not be answered before the 1985 Legislative Assembly. Therefore, the committee considered a bill draft which created a pilot program authorizing the establishment of one area service agency. The committee also decided that the regional delivery of special education services more appropriately should be addressed by the interim Education "A" Committee.

The area service agency pilot program bill draft established an area service agency pilot program in one area with goals very similar to the original bill draft which established area service agencies on a statewide basis. One major distinction from the original proposal is that the pilot program bill draft does not address the provision of special education services. The area service agency pilot program boundaries would be formed by the Superintendent of Public Instruction no later than June 1, 1985, and the boundaries must be established in such a manner to ensure that no fewer than 12,000 school age children reside within the area to be served. The bill draft required pilot program employees to work cooperatively with county superintendents of schools within the pilot program area to establish a plan for the eventual transfer of all county superintendents of schools' duties to the area service agency by January 1, 1989. Forty percent of the pilot program agency's budget must be spent for educational services primarily designed to provide staff development, curriculum improvements, media services, and supplemental vocational education services. The area service agency pilot program board would possess the power to assess school districts located within the program area boundaries an amount not to exceed two mills on the taxable valuation of the school district. The bill draft also provided that the two-mill assessment would not be included in a school district's general or special fund mill levy cap.

Another major difference between the pilot program bill draft and the initial area service agency bill draft is that the pilot program bill draft did not provide for the elimination of the office of county superintendent of schools. The county superintendents of schools would remain in office under the pilot program bill draft. The bill draft required cooperative efforts be made between the pilot program employees and existing county superintendents of schools to develop a plan to eventually phase out the responsibilities of the county superintendents of schools.

The state director of vocational education recommended that vocational education be deleted from the area service agency pilot program bill draft. This recommendation was made because vocational education is currently organize on an areawide basis similar to the area service agency pilot program concept.

The committee discussed contemplated reductions in the salary and position of county superintendents by boards of county commissioners. Section 11-10-10 provides in part that "The salary of a county official shall not be reduced during the official's term of office." Section 11-11-11 provides in part that the board of county commissioners "shall supervise the conduct of the respective county officers." The Attorney General's office has issued at least two letters to different county state's attorneys indicating

that a board of county commissioners may provide that "the office of county superintendent of schools may be less than full time and may be salaried at a reduced rate, provided that the salary is not reduced during the official's term of office."

The assistant superintendent of instruction testified that the responsibilities of county superintendents will continue to decline and the North Dakota County Superintendents Association therefore recommends studying the feasibility of implementing area service agencies. He testified that if county superintendents' responsibilities continue to be diluted, something must take their place to provide those services. He suggested an area service agency might well serve this purpose. He supported the area service agency pilot program bill draft.

The Mountrail County Superintendent of Schools provided the committee with a plan for the implementation of area service agencies. He testified that the benefits of an area service agency might include the improvement of classroom instruction, curriculum, educational services to children, and assistance to teachers. Other testimony received by the committee indicated benefits of such a program might include collective bidding by school districts for supplies and equipment resulting in less cost to those districts; increasing the quality of education in schools; providing assistance in the area of special education, especially for the multiply handicapped; improving school curricula; and the development of inservice training programs. It was testified that inservice training for teachers is now very general in nature and should be focused for teachers in specific areas such as math and science. Programs for more specialized inservice teacher education could be better provided on a regional basis through area service agencies.

The assistant superintendent of instruction recommended that the area service agency pilot program bill draft include a state general fund appropriation of $250,000 per year, with 40 percent of that appropriation to be used for the provision of educational services. The balance of $150,000 would be available for salaries and operating expenses. The expense of other program services provided by the area service agency would be the responsibility of local school districts.

It was reported to the committee that the Governor is proposing the implementation of technical assistance centers for schools. The assistant superintendent of instruction testified that the Governor's proposal is aimed at addressing the provision of educaional services and not administrative services or any revision of the role of county superintendents of schools. The committee agreed that it may be necessary to compare the Governor's proposal to the area service agency pilot program during the next legislative session. It was reported that the Governor's proposal will cost approximately $2 million over the next biennium.

Recommendation

The committee recommends House Bill No. 1053 to implement an area service agency pilot program. The pilot program boundaries would be established by the Superintendent of Public Instruction. The bill requires that 40 percent of the pilot program agency's budget would have to be spent for educational services. The bill provides the area service agency pilot program board with authority to assess local school districts up to two mills on the taxable valuation of their property to pay for services provided through the area service agency pilot program. The bill also requires a plan be established for the eventual transfer of all county superintendents of schools' duties to area service agencies by January 1, 1989. The bill contains a state general fund appropriation of $250,000.

MINIMUM CURRICULUM REQUIREMENTS

Background

1983 House Concurrent Resolution No. 3077 states the "minimum high school curriculum and length of school terms prescribed by statute may not reflect contemporary educational needs of public school students," and it directs an interim study of the subject of minimum high school curriculum and the length of school terms.

North Dakota Century Code Section 15-41-24 requires the following units of study to be made available to all students in each public and private high school in North Dakota at least once during each four-year period:

1. English — four units
2. Mathematics — three units
3. Science — four units
4. Social studies — three units
5. Health and physical education — one unit
6. Music — one unit
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education — six units

Although high schools are required to make available those subject units referred to above to receive approval by the Superintendent of Public Instruction, Section 15-41-06 provides that "four units of high school work shall be considered the minimum number of any year from the ninth through the twelfth grade." Therefore, a total of 16 units of high school work are the minimum graduation requirements permissible under Section 15-41-06.

The report "A Nation at Risk: The Impertive for Educational Reform" prepared by the National Commission on Excellence in Education recommends that state and local high school graduation requirements be strengthened and that "at a minimum, all students seeking a diploma be required to lay the foundations in the Five New Basics by taking the following curriculum during their four years of high school: (a) four years of English; (b) three years of mathematics; (c) three year of science; (d) three years of social studies; and (e) one-half year of computer science." The report futher states that for college-bound high school students, two years of a foreign language in high school are strongly recommended.

Minimum high school curriculum requirements in North Dakota date back to 1963 and were established in an attempt to ensure a minimum availability of various courses in all state high schools. Prior to the issuance of an Attorney General's opinion on the matter, the Superintendent of Public Instruction ordered North Dakota high schools to require 18 credit units for those students graduating in the spring of 1984 and 20 credit units for students graduating in the spring of 1985. It was reported that a majority of public school districts in North Dakota require at least 17 or 18 high school credit units for graduation and that larger school districts generally require more credits for graduation.

The assistant superintendent of instruction recommended increasing graduation requirements to 20 credit units. He referred to an Attorney General's opinion issued December 21, 1983, which among other things concludes that local school boards, and not the Superintendent of Public Instruction, have the authority to establish courses of study required for graduation in excess of those required by Section 15-41-06. He therefore suggested that appropriate legislation is necessary to require 20 credit units for graduation from high school. He reported that the Superintendent of Public Instruction recommends that even if graduation requirements are increased state foundation aid payments should not be affected by that increase. He reported that approximately 80 percent of all high school students are currently required to take five credit units per year.

The Superintendent of Public Instruction testified that his office has made a number of recommendations to schools for voluntary implementation. The superintendent recommended that schools return to mandatory homework at all grade levels, that extracurricular activities be returned to Friday and Saturday nights, that high schools reinstate minimum competency testing for students prior to their graduation, that colleges begin minimum competency testing for future teachers prior to their graduation and certification, that high schools become more vigilant in safeguarding the interests of students regarding college recruitment, that schools able to do so employ a college track, that small schools increase their share of services, and finally, that schools generally implement greater expectations of their students. He reported that most schools are now moving toward a 20-unit graduation requirement level and this trend will continue. He testified that a variety of important recommendations made by local and national commissions and organizations including the 1982 North Dakota Governors Conference on Public Education, the North Dakota Curriculum Council, the National Commission on Excellence in Education, the Task Force on Education for Economic Growth, and the College Board were considered before he made the determination that graduation requirements should be increased for high school students in this state.

The committee considered a bill draft which required all school districts to offer at least five credit units per year to each student attending high school. The bill draft did not require all students to be enrolled in five credit units per year, nor did it change graduation requirements. The assistant superintendent of instruction urged that the bill draft require that high school students be enrolled in at least five credit units per year.

The committee received statistics from the director of secondary education regarding the curriculum requirements of a number of schools responding to a survey by the Superintendent of Public Instruction. The survey results regarding the number of credits students must be annually enrolled in and the minimum number of credit units required for graduation are as follows:

Minimum Number of Credit Units Required for Graduation	Number of Schools
17	18
17 1/2	1
18	26
19	85
19 1/4	2
20	66
20 1/2	2
21	16
22	3
24	3
28	1

Minimum Number of Enrolled Credit Units	Number of Schools
4	7
4 1/4	4
4 1/2	9
5	147
5 1/2	37
5 3/4	1
6	16
6 1/2	1
7	1

The director of secondary education recommended that enrollment requirements be increased to require students to be enrolled in five credit units per year. He did not recommend a change in the current graduation requirements, but he did recommend that Section 15-41-06 be amended to specifically state minimum graduation requirements.

The committee expressed concern that raising the minimum enrollment requirements might also increase student dropout rates. It was also noted that a large majority of school districts responding to the survey already do require their students to be enrolled in at least five credit units per year. It was suggested that those school districts which do require student enrollment in at least five credit units per year will be adversely impacted by the bill draft because those school districts will receive less in state foundation aid proportionate payments for their summer school programs. Under current law school districts receive a one-fourth foundation aid payment for each course offered during the summer school term whereas under the bill draft those districts would receive a one-fifth school foundation aid payment for each such course.

Conclusion

The committee makes no recommendation with respect to increasing graduation requirements or minimum curriculum requirements.

LENGTH OF SCHOOL TERM

Background

North Dakota Century Code Section 15-47-04 provides that the public school year shall begin on the first day of July and shall close on the 30th day of June of the following year, with a "school month" consisting of 20 days, and a "school week" consisting of five days. Section 15-47-33.1 was enacted by the 1983 Legislative Assembly and permits modification of the standard public school calendar with approval of such modifications by the Superintendent of Public Instruction.

Section 15-47-33 provides that all elementary and

secondary schools in the state shall provide "at least 180 days of classroom instruction during each school term," and Section 15-41-06 provides that all unit high school courses "shall be taught a minimum of 40 minutes a day for at least 180 days." Section 15-47-33.1 provides that the school board of a public school district may apply to the Superintendent of Public Instruction for approval of a pilot program in which the school calendar of the district is modified so that fewer than 180 days of classroom instruction would be provided by the district during the course of a school term.

The subject of classroom time devoted to instruction of the "new basics" is another subject specifically addressed in the report issued by the National Commission on Excellence in Education. The commission recommended that "significantly more time be devoted to learning the new basics," and that reaching this objective would require more effective use of the existing schoolday, a longer schoolday, or a lengthened school year. To this end, the commission recommended that "school districts and state legislatures should strongly consider seven-hour schooldays as well as a 200- to 220-day school year."

Committee Study

North Dakota school districts are currently paid for 180 days. These "instructional days" include two parent-teacher conference days, three holidays, and two days for attendance at an annual Education Association convention. Therefore, the North Dakota school term is actually composed of 173 classroom instructional days, one of the shortest in the nation. The deputy superintendent of public instruction suggested that the school term be increased to provide two additional days of actual classroom instruction and three days for teacher inservice education. It was further suggested that if the school term is extended to 185 days additional foundation aid should be paid to school districts to account for those days. It was estimated that the cost of adding five days to the school term would be approximately $10 million over the 1985-87 biennium.

Information submitted to the committee indicates all states have established a minimum length of school year with 21 states having fewer than 180 instructional days in the school year, and three states, including North Dakota, having a school year consisting of fewer than 175 instructional days. The information indicates that a school year of 175 to 180 instructional days is prevalent throughout the United States and that North Dakota provides for fewer instructional days than 95 percent of all states.

The committee considered a bill draft to increase the minimum length of the school term. The bill draft increased the school term by five days per year and permitted local school boards to authorize three of those additional days to be used for inservice education training. Therefore, the minimum number of instructional days required under the bill draft would be 175 days or 178 days if school boards did not authorize any part of the three days permitted for inservice education training. Representatives from the North Dakota Education Association and the North Dakota Farm Bureau supported the bill draft. A school superintendent testified in support of the bill draft noting that inservice education training is a very important concept which leads to improved teacher productivity in the classroom. He testified that education took a step backward during the 1983 Legislative Assembly when the two parent-teacher conference days were included as part of the school term without increasing the school term by a corresponding two days.

Recommendation

The committee recommends House Bill No. 1052 to increase the minimum school term by five days with a local school board option of using three of those extra days for inservice education training. The estimated biennial cost of increasing the school term by five days is $10 million.

STUDENT ABSENTEEISM

Background

1983 House Concurrent Resolution No. 3077 requires an examination of the effects on students of nonacademic extracurricular activities and absenteeism. The resolution provides that as nonacademic extracurricular activities "are keeping many secondary school pupils away from the classroom during regular school hours" and as "the effects of all absences from the classroom in terms of secondary students' abilities to master vital academic courses have not been studied and quantitifed," there is a need to study the effects of such nonacademic extracurricular activities and all types of absenteeism.

The report of the National Commission on Excellence in Education recommended that "attendance policies with clear incentives and sanctions should be used to reduce the amount of time lost through student absenteeism and tardiness."

Committee Study

Testimony received by the committee indicated that existing law provides individual school districts with the authority and prerogative to limit and determine those extracurricular activities for which secondary school students may be excused from classroom attendance. The deptuy superintendent of public instruction testified that a basic policy decision should be made to determine whether the regulation of student time spent on extracurricular activities should be left in the hands of local school districts, thus maintaining local autonomy and control, or whether local school districts are "too close to the problem" thereby requiring state intervention. It was reported that the Superintendent of Public Instruction in the past had informal regulations relating to absenteeism policies but that the superintendent's current policy is that absenteeism decisions should be made on the local level and any steps made to deal with absenteeism should be initiated at the local level. The deputy superintendent testified that the superintendent's regulations previously required that to be promoted to a high school grade, students were required to have attended school for a minimum of 160 days during the course of a school year. That requirement has long been abandoned. The North Dakota High School Activities Association requires students who participate in interscholastic sports to be passing a minimum of three subjects while participating in those sports.

A survey conducted by the North Dakota Council of School Administrators indicated that most of the 180 responding schools had policies for excused absences such as illness, a death in the family, harvest, and so on. The survey results also indicated that all 180 responding school districts had established absentee-

ism policies. The North Dakota Council of School Administrators suggested local school boards have adequate authority to enforce school attendance policies and therefore recommended that the authority to implement and enforce such policies should remain at the local level.

A representative of the North Dakota High School Activities Association reported that the American College Testing Service conducted a study comparing the value of four factors in predicting the success of students in their adult lives. He said three of the four factors, high grades in college, high grades in high school, and high scores on the American College Test, were found to have no predictive value. The only factor which could be used to accurately predict the success of students in later life was achievement in extracurricular activities participated in by the student. The North Dakota High School Activities Association has recently found that North Dakota statistics are similar to those found in other states in the midwest. Examples were given to the committee showing several North Dakota high schools where the grade point average of students participating in athletic and other interscholastic activities were significantly higher than those for students not involved in such activities. It was reported that the North Dakota High School Activities Association board of directors has reduced the number of athletic activities being scheduled for weekdays and has scheduled different athletic tournaments from weekdays to weekends to reduce the loss of instructional time in the classroom. It was recommended that interscholastic activities must be performed in harmony and in cooperation with classroom instruction and that interscholastic activities should be scheduled whenever possible at times which do not unnecessarily infringe upon the classroom day.

The committee reviewed the results from a study conducted by the Bureau of Educational Research at the University of North Dakota regarding the effects on students of nonacademic extracurricular activities and absenteeism. The survey was distributed to a sample of 16 schools enrolling 2,411 secondary school students and employing 226 teachers. The school enrollments ranged from 52 to over 500 students in grades 7 through 12. The schools were evenly distributed geographically across the state. The results indicated the overwhelmingly reported reason for student absenteeism is illness. The report indicates that students lose an average of approximately two days per year due to school-sanctioned extracurricular activities. The data collected from the study would indicate that those students participating in nonacademic extracurricular activities usually have higher grade point averages than nonparticipating students but that the reason for such achievement is not likely dependent on extracurricular activity participation. The survey results indicate that students who do not complete high school are usually not involved in extracurricular activities. Most schools report that they would opt to schedule extracurricular activities on Friday and Saturday evenings. The most frequently reported reasons for teacher absences is illness and the supervision of school activities. Teacher absences due to the supervision of school activities was reported to average approximately two classes missed per teacher per year and four classes missed by coaches each year.

The committee also heard extensive testimony regarding high school student dropouts. The director of guidance and counseling of the office of the Superintendent of Public Instruction testified that approximately 14 percent of all students entering North Dakota high schools do not graduate. He testified the dropout rate has been increasing the past several years and that this is a national trend. He also indicated that North Dakota's overall dropout rate is not alarming compared to other states but that there are pockets in North Dakota where the dropout rate is very high. He reported the North Dakota dropout rate on an annual basis is significantly lower than the national average and that information gathered by the Superintendent of Public Instruction at the end of each school year indicates the dropout average for one year to be approximately three percent to 3.6 percent of the student population. The reported state averages for high school student dropouts for the 1981-82 school year are as follows:

Grade 9	1.91 percent
Grade 10	3.47 percent
Grade 11	3.39 percent
Grade 12	3.68 percent

The graduation rate in North Dakota was 84.9 percent in 1981 compared to 86.6 percent in 1976. At the present time the Superintendent of Public Instruction gathers dropout information from school districts on a voluntary basis. The Superintendent of Public Instruction provides data collection forms to counselors, principals, and superintendents of each school requesting that this information be provided on a monthly basis. It was suggested that if graduation requirements are increased there may be a need for increased services to students and school staff to address the potential increase in the number of student dropouts. The director of guidance and counseling testified that the voluntary dropout reporting procedure used by the Superintendent of Public Instruction does not provide consistent data on a monthly or quarterly basis. He recommended that a comprehensive plan for dropout data collection and followup services be developed to address the growing problem of high school dropouts in North Dakota. The primary purpose of the dropout prevention plan which was recommended is to collect dropout information and data in order that direct contact with identified students is made to find out why they dropped out, provide appropriate counseling to them, and make employment referrals. The cost of the proposed high school dropout prevention plan was estimated to be approximately $73,000 over the 1985-87 biennium.

Committee concern was raised regarding whether state money would prevent or lessen the problem of high school dropouts. It was noted that major factors affecting student dropout rates include student and parent attitudes and personal family problems. Committee members questioned whether such problems are not primarily local in nature and whether the state could do much to address them. It was indicated that a strong incentive must be made at the local level and by parents to keep children in school.

Conclusion

The committee makes no recommendation with respect to student absenteeism or high school dropouts.

STATUTORY DUTIES AND RESPONSIBILITIES OF TEACHERS

Background

1983 House Concurrent Resolution No. 3077 directed an examination of the duties and responsibilities of elementary schoolteachers as such duties and responsibilities are described in current law. Maintaining that these statutorily described duties and responsibilities "may be obsolete," the resolution makes reference to Chapter 15-38.

Committee Study

The committee briefly reviewed selected statutes regarding teachers' responsibilities. The director of certification of the office of the Superintendent of Public Instruction testified that there are a number of statutes which are currently out of date and should be revised. He suggested that revision of just those statutes would, however, be inadequate and that the entire school code requires review and reorganization. The committee agreed that it did not have sufficient time to undertake such a task. The deputy superintendent of public instruction indicated that the department has planned to review the school code and make recommendations to delete obsolete statutes. He testified that revision of the entire school code, however, would be a complex and very time-consuming project.

Conclusion

The committee makes no recommendation with respect to statutory revision of the North Dakota Century Code relating to statutory references to teachers' responsibilities and duties. The committee recommended to the Superintendent of Public Instruction that the superintendent introduce a bill in the 1985 Legislative Assembly to delete or amend outdated statutes concerning teachers' responsibilities.

INSTRUCTIONAL TELEVISION

Background

The 1961 enactment of NDCC Section 15-47-36 was the first act of the North Dakota Legislative Assembly relating to the provision of educational television services to public schools in this state. Section 15-47-36 provided that the Superintendent of Public Instruction could contract with a nonprofit corporation "for the purpose of providing the people of the state with educational television services in the fields of elementary, secondary, and higher education, adult education, and other fields tending to promote cultural development."

In 1969 House Bill No. 386 developed a comprehensive statutory framework for educational broadcasting. That legislation, codified as Chapter 15-65, created the Educational Broadcasting Council for the purpose of encouraging and directing "the creation of educational radio and television facilities within the state of North Dakota."

It was not until 1977, however, that the Educational Broadcasting Council, a 12-member body whose members serve without pay, was directed to "contract with eligible applicants to build and operate public television stations in this state." A state appropriation was provided for this purpose by the 1977 Legislative Assembly and the Educational Broadcasting Council, with its eligible contractor, Prairie Public Television, Inc., embarked upon the construction of an educational television network in the state. The network currently has six television stations covering North Dakota, northwestern Minnesota, portions of northern South Dakota, and cities in Manitoba and Saskatchewan that are served by cable television operations.

In addition to its general interest programming, Prairie Public Television airs a full schedule of daytime school programs. Daytime school programming in North Dakota is funded by schools which are members of Prairie School Television, a nonprofit corporation not part of Prairie Public Television, Inc. Each school member of Prairie School Television pays annual fees of $2 per student in grades kindergarten through 12, and this fee purchases the right to use all televised instructional lessons, teacher schedule guides for a complete year, and one free lesson manual for each program series.

Testimony

The general manager of Prairie Public Television testified before the committee that daytime school programming provided by Prarie School Television is funded entirely by those schools which are members of Prairie School Television. Those member schools cooperatively plan the Prairie School Television schedule and its content, consisting of over 50 separate series, with over 1,000 separate programs. The annual budget for Prairie School Television is more than $25,000, and this money is spent each year to obtain television lessons in a number of subject areas, including guidance, art, science, health, human relations, economics, and math. The general manager reported that many states, including South Dakota and Nebraska provide financial support for instructional television used in public schools. He testified that instructional television is an economical means of providing specific television programming which many smaller school districts do not presently provide. He further reported that Prairie Public Television donates 244 hours of air time per year to Prairie School Television with an estimated value of approximately $250,000 for the 1982 broadcast year. He recommended that the state pursue a financing system for the provision of instructional television through Prairie School Television which would make full Prairie School Television programming available on an equal basis to all school districts in the state.

Prairie School Television member school districts are currently assessed $2 per student to provide a total state budget of approximately $128,000 per year. Most educational programs are purchased from a consortium which produces the programs and sells them nationwide. Committee testimony suggested that it is unfair to ask those school districts which have kept Prairie School Television alive for the past 20 years to continue financing the statewide broadcast to all schools of instructional television programs.

The committee received testimony from a number of school educators and administrators who commented on their experiences with instructional television. It was reported that instructional television is a good resource to replace audiovisual aids, to make teachers more effective and efficient in the classroom, to provide a variety of instructional programs to which children have a built-in receptivity, to save material and teacher preparation time, to motivate students, to supplement traditional methods of instruction, to provide rural schools with cultural experiences otherwise not accessible, and to permit the use of resources without actually purchasing them. It was also suggest-

ed that the greatest potential for instructional television may lie in the area of foreign language instruction which is available on Prairie School Television. It was reported that a shortage of foreign language teachers exists and that many schools are not able to offer foreign language instruction because of this shortage. It was therefore recommended by the chairman of the Curricular Advisory Committee for Prairie School Television that the committee request the Department of Public Instruction to include in its budget funds necessary to contract for instructional television on behalf of all schools in North Dakota. The estimated statewide cost of providing Prairie School Television to all school students would be approximately $1.25 per student or $330,000 for the next biennium.

The deputy superintendent of public instruction reported that $250,000 for instructional television services had been placed in the superintendent's budget for consideration during the last legislative session. He testified those funds were removed during the legislative session. He suggested it would require approximately $320,000 to purchase statewide instructional television services for the 1985-87 biennium. The deputy superintendent reported that the Superintendent of Public Instruction would include $320,000 in its requested budget for the 1985-87 biennium which funds would be used to purchase statewide instructional television programming.

Conclusion

The committee makes no recommendation with respect to the funding of instructional television.

EDUCATIONAL EXCELLENCE

The committee considered two separate bill drafts each of which addressed several issues relating to the general goal of promoting educational excellence.

The dean of the University of North Dakota Center for Teaching and Learning presented a merit schools program for the North Dakota Education Association. The program would establish an incentive funding structure to ensure educational opportunities for North Dakota schoolchildren. The program involves three merit levels of additional state foundation aid. The program recognizes the appeal of merit pay for teachers but states that "it is a distraction from the larger, more central need for educational reform." He suggested the program is addressed to the "concept of merit in relation to the overall quality of schools."

The merit schools program would provide financial incentives for schools to promote educational excellence by developing curricular and staff certification beyond those basic minimum levels required for schools to remain eligible for basic foundation aid payments. The merit schools programs was recommended as a positive and comprehensive response to the desire to bring about an improvement in the quality of educational opportunities and experiences offered to young people in North Dakota. Under the merit schools program the foundation aid program would remain the basic principal source of funds for maintaining schools. The merit schools program was recommended as a concept to provide incentives for schools to go beyond those basic minimal requirements to achieve a level of educational merit.

The committee considered a bill draft implementing the merit schools program. The bill draft authorized the Superintendent of Public Instruction to administer a merit schools program. Every school district participating in the program would be required to organize a local educational excellence committee to plan and prepare a proposal to achieve merit school status. The school board of each school district would in turn be required to consider and approve any such proposal. In addition to the local educational excellence committee each school within a participating school district would be required to organize a parent advisory committee to develop annual educational school objectives, assist the local educational excellence committee in preparation of the district's merit school proposal, and to monitor each school's progress toward compliance with the merit schools proposal. Participating school districts would be required to meet specified qualifications in a number of areas including foreign language curriculum requirements; student participation in foreign language courses; mathematics curriculum requirements; student participation in mathmatics coursework; vocational education curriculum requirements; art, music, and physical education curriculum requirements; counseling services; inservice education programs for professional development; extended teacher contracts; and the educational qualifications of school district teachers.

No school district currently meets the qualifications necessary to achieve the lowest level of merit school aid. The qualifications necessary to receive merit school aid varied according to the size of high school student population within each district. A school district which applies for and is granted the lowest level of merit school aid would receive a supplemental school aid payment equal to 10 percent of that school district's total foundation aid payment. The merit school payments would increase as school districts achieve merit levels II and I. At merit levels II and I school districts would receive 12 percent and 14 percent, respectively, of their total foundation aid payments as a supplemental merit school payment. School districts which submit a merit school proposal could be granted incentive payments by the Superintendent of Public Instruction in an amount not to exceed 80 percent of the anticipated annual payment that they would receive once the merit level being sought is achieved for a period not to exceed four years.

The assistant superintendent of public instruction testified that the superintendent recognizes several positive aspects proposed by the merit schools program. He testified the superintendent endorses efforts to increase community involvement and public awareness regarding schools' progress toward quality education, and to emphasize a strong basic core curriculum and smaller classes in the early grades, student evaluation and reporting systems, broader curricula in schools, and staff development plans. He testified the superintendent is concerned, however, that the program may create two separate school accreditation systems which may double the burden on them. He testified the foundation aid program and merit schools program must be mutually compatible.

Representatives from the North Dakota Education Association and of the Superintendent of Public Instruction estimate the merit schools program would cost approximately $26 million for the 1985-87 biennium. However, it was reported that the estimated cost of the merit schools program may go as high as $40 million for the biennium depending upon how many schools choose to participate in the program. The president of the North Dakota Education Association

suggested that if cost is the primary problem in approving the merit schools program the committee might consider alternatives to reduce that cost. He testified that school districts could be awarded merit school aid on a first-come, first-served basis and that the state's dollars given to those schools might also be reduced.

The committee also considered a bill draft concerning recommendations to provide state payments for staff development to school districts to encourage the improvement of educational excellence. The Superintendent of Public Instruction emphasized the need to identify and reward exceptional classroom teachers. He proposed a bill draft which provided additional funds paid to school districts on a per-pupil basis to reward meritorious teachers. He said advantages of this type of program would include the identification of valuable instructors, increased salaries for exceptional instructors, increased productivity, maintenance of excellent teachers within the system, and it would be a voluntary program. Participating school districts would be required to identify those teachers considered to be meritorious and to utilize those teachers for more classroom instruction, student tutoring, continued professional education, or in whatever other appropriate fashion a school district desired. Other representatives of the Superintendent of Public Instruction testified that specific regulations and guidelines would be required to address the eligible ways in which school districts might spend money under the merit pay proposal. Total cost of the bill draft was reported to be $10 million for the 1985-87 biennium.

Conclusion

The committee makes no recommendation with respect to legislation addressing issues relating to educational excellence in general.

TABLE OF CROSS-REFERENCES FOR SENATE BILL NO. 2065

Replacement NDCC Section	Present NDCC Section
15-27.1-01	15-53.1-01
15-27.1-02	15-53.1-02
15-27.1-03	15-53.1-11
15-27.1-04	15-53.1-12
15-27.1-05	15-53.1-13
15-27.1-06	15-53.1-20
15-27.1-07	15-53.1-21
15-27.1-08	15-53.1-30
15-27.1-09	15-53.1-31
15-27.1-10	15-53.1-35
15-27.2-01	15-53.1-05
15-27.2-02	15-53.1-05.1
15-27.2-03	15-53.1-05.2
15-27.2-04	15-53.1-06
15-27.2-05	15-53.1-07
15-27.3-01	15-53.1-14 and 15-53.1-17
15-27.3-02	15-53.1-18
15-27.3-03	15-53.1-19
15-27.3-04	15-53.1-15
15-27.3-05	15-53.1-16
15-27.3-06	15-53.1-16.1
15-27.3-07	15-53.1-32
15-27.3-08	15-53.1-22
15-27.3-09	15-53.1-23
15-27.3-10	15-53.1-24
15-27.3-11	15-53.1-25
15-27.3-12	15-53.1-26
15-27.3-13	15-53.1-26.1
15-27.3-14	15-53.1-27
15-27.3-15	15-53.1-28
15-27.3-16	15-53.1-29
15-27.3-17	15-53.1-34
15-27.3-18	15-53.1-36
15-27.3-19	15-53.1-39 and 57-15-14
15-27.3-20	15-53.1-40
15-27.4-01	15-53.1-33 and 15-53.1-41
15-27.4-02	15-53.1-42

Section 15-53.1-33 is repealed but is included in proposed Section 15-27.4-01.
Section 15-53.1-37 is repealed.
Section 15-53.1-38 is repealed.

ELECTIONS COMMITTEE

The Elections Committee was assigned two studies. Senate Concurrent Resolution No. 4019 directed a study of the voting systems in use in North Dakota, with emphasis on ballot requirements, voting machine and system requirements, and procedures regarding informed use of voting machines and systems. House Concurrent Resolution No. 3055 directed a study of statutes relating to the petition of governmental bodies, with emphasis on petition requirements, verification requirements, and the feasibility and desirability of achieving uniformity.

Committee members were Representatives Tish Kelly (Chairman), Mike Hamerlik, S. F. Hoffner, Roger A. Koski, Donald E. Lloyd, Earl R. Pomeroy, Kelly Shockman, and Kenneth N. Thompson; and Senators Hal Christensen, Raymon E. Holmberg, and Wayne Stenehjem.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

VOTING SYSTEMS STUDY

Voting Systems in Use

There are four basic types of vote counting equipment currently available:

1. Paper ballots.
2. Mechanical or automatic voting machines. These are self-contained units that recieve and record votes on counter dials. The voter pulls a lever to cast the vote. After the polls close totals are immediately available.
3. Electronic voting (punchcard) systems. The voter punches through a ballot card with a mechanical punching device. After the polls close, ballots are tabulated by either a central computer or counting device.
4. Electronic counting (optical scanning) machines. The voter marks a paper ballot with a special pen. The scanner reads the marks on each ballot and totals the ballots.

North Dakota law authorizes the use of all four types of voting devices. The use of voting machines was authorized in 1955, electronic voting (punchcard) systems were authorized in 1977, and the electronic counting (optical scanning) machines were authorized in 1983.

In the 1982 elections two counties in North Dakota used voting machines — one of those used paper ballots in the rural precincts; 20 counties used electronic voting systems, with one using paper ballots in the rural precincts; one county used electronic counting machines; and 30 counties used paper ballots. Cass County has recently purchased electronic counting machines for use in that county.

The county auditors are responsible for the mandatory testing of electronic voting systems before elections and before and after tabulation of ballots, for providing training for election officials and for distributing ballots and other election supplies to them, and for supervising the counting of ballots for the electronic voting systems and electronic counting machines.

Problems With Voting Systems

The committee received testimony concerning voting systems in use in the state from representatives of distributors of the electronic voting systems and electronic counting machines, the Secretary of State, and numerous county auditors.

The committee sent a questionnaire to all county auditors in an attempt to determine what problems county auditors perceive with the voting systems in use in their counties and possible suggestions they have for improvement of the election process. Forty-four county auditors responded and their suggestions were considered by the committee.

County auditors using both the electronic voting systems and electronic counting machines expressed satisfaction with their use. A number of problems with the voting systems, however, were testified to or noted by the committee, including:

1. Improper placement of a ballot label for the Grand Forks punchcard system resulted in the disenfranchisement of 526 people and required a special election. The design of the punchcard system made it impossible to count the ballots by hand.
2. There has been some negative response to the punchcard system by the voters, particularly older citizens. With the punchcard system the voter is unable to determine for whom he has voted by looking at the card after voting.
3. The absentee voting system in counties that use the punchcard system is difficult for some people to use.

Election Officials

Election officials are appointed pursuant to North Dakota Century Code (NDCC) Section 16.1-05-01. That section reads:

> 16.1-05-01. Election officers. At each primary, general, and special statewide or legislative district election, and at county elections, each polling place shall have an election board in attendance. The election board shall consist of an election inspector and two election judges.
>
> 1. The election inspector shall be selected in the following manner:
>   a. In all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and shall fill all vacancies occurring in those offices.
>   b. In all other areas, the board of county commissioners shall appoint the election inspectors and shall fill all vacancies occurring in those offices.
>   c. Except in the case of special elections, all appointments required to be made under this section shall be made at least twenty-one days preceding an election. The governing body or board shall notify the county auditor of the appointments, and of any vacancies filled, within twenty-four hours of its action.
> 2. The election judges for each precinct shall be the precinct committeemen receiving the largest number of votes at the precinct caucus at which they were elected, and

representing the two parties which cast the largest and next largest number of votes in the state at the last general election. If for any reason a precinct committeeman does not wish to serve as an election judge, he shall appoint from his precinct a member of his party to serve as election judge. Should such appointment not be made, the position shall be filled by appointment by the district party chairman. Each election judge shall be given a certificate of appointment signed by the chairman of the district committee of his party. The district committee chairman shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least two weeks prior to the primary, general or special election. If this notice is not received within the time specified in this section, the election inspector shall appoint the judge no later than one week prior to the election. If at any time before or during an election, it shall be made to appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that either of the election judges or any poll clerk is disqualified under the provisions of this chapter, the inspector shall remove such judge or clerk at once and shall fill the vacancy by appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk had taken the oath of office as prescribed in this chapter, the inspector shall place such oath or affidavit before the state's attorney of the county.

3. Poll clerks shall be appointed by the election judges. Each election judge may appoint one poll clerk. However, in voting precincts or districts in which over three hundred votes are cast in any election, election judges may each appoint one additional poll clerk. The appointment of poll clerks by the election judges shall be made on the basis of the prospective clerks' knowledge of the election procedure and ability to write legibly. All election precincts that use voting machines as authorized in chapter 16.1-06 may, in addition to all other authorized poll clerks, have as many as two additional poll clerks appointed by each election judge. The additional poll clerks shall be appointed on the same basis as other poll clerks.

Among other duties, the members of the election board are:

1. To provide instruction on voting devices to voters.
2. Prior to any ballot being given to a qualified voter, to stamp once on the back at the top with the designation "official ballot," the precinct name or number, county name, election date, and the word initials.
3. To initial the ballot in the appropriate space before giving the ballot to the voter.
4. To deliver a ballot to the voter.
5. To challenge the right of a person to vote if it is known or suspected that the person offering to vote is not a qualified voter, and if the challenge is not withdrawn, to provide the voter with an affidavit to verify that the voter is a qualified elector of the precinct.
6. To canvass all ballots following the close of the polls.

The principal duty of poll clerks is to maintain the poll books.

Election officials are paid the minimum wage for the election but the compensation may not exceed $50. Election officials are paid only expenses and mileage for attendance at the training session but anyone attending receives 25 percent more than minimum wage for election pay up to a maximum of $50.

Within 10 days after an election, the county canvassing board must meet and publicly canvass the returns of the election.

The county canvassing board is composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and a representative of the district committee of each legislative district which wholly or partly falls within the boundaries of the county as appointed by the district chairmen of the two political parties which received the highest number of votes cast for Governor at the most recent general election at which a Governor was elected.

As the result of testimony received, the committee noted these concerns over the duties of election officials:

1. The county using electronic counting machines has used an unauthorized resolution board the night of the election to review overvote and blank ballots. It appears other counties may be using similar boards. Counties with a large number of precincts find it impractical to require all the election boards — which may be over 100 people — to stay at the auditor's office until all the votes are counted.
2. There have been difficulties in getting election officials to do their jobs properly, especially initialing and stamping ballots. There has also been a failure on the part of political parties to appoint election judges.
3. The present law which requires the county auditors to deliver election supplies at least 15 days before the election does not allow the auditors enough time for their preparation.
4. There are elections for which there is no political consequence when it is difficult to get a quorum of the county canvassing board because the representatives of the district committee do not attend.

Public Administrator

North Dakota Century Code Chapter 11-21, originally enacted by the 1903 Legislative Assembly, requires each county to elect a public administrator every four years. The public administrator is ex officio public special administrator, guardian, and conservator in the county and must take charge of the estates of all deceased persons, and persons and estates of all minors, and the estates or persons and estates of all incapacitated persons in those cases where no other guardian or conservator is qualified and willing to act.

The public administrator has the same powers as are conferred upon special administrators, guardians, and conservators and is subject to the same duties,

penalties, provisions, and proceedings as are enjoined upon or authorized against special administrators, guardians, and conservators by the laws of this state insofar as they are applicable. The public administrator may be appointed in proper cases as general administrator without giving additional bond, except that the court may require additional security, and when so appointed, must continue the administration until it is finally settled unless the public administrator resigns, dies, is discharged in the ordinary course of law as administrator, or is removed for cause as public administrator or as administrator of such estate.

According to a survey done by the Secretary of State's office, at the 1984 election out of the 46 counties which responded, 35 have no candidates for the public administrator's office, 10 counties have one candidate, and one county has two candidates. Apparently there is not enough work or financial incentive to encourage people to run for the office. Even when there are no candidates for an office the position must be placed on the ballot. This encourages write-in votes and may slow down the counting process.

Electioneering

North Dakota Century Code Section 16.1-10-06 provides:

> 16.1-10-06. Electioneering on election day — Penalty. Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, shall be guilty of an infraction. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are displayed on fixed permanent billboards, shall not, however, be deemed a violation of this section.

The United States Supreme Court in Mills v. Alabama, 384 U.S. 214 (1966), held unconstitutional an Alabama statute that is very similar to Section 16.1-10-06. The court held the statute violated the First Amendment, which prohibits laws abridging the freedom of speech, or of the press.

Recommendations

The committee recommends House Bill No. 1056 to provide that the delivery of election supplies and the training sessions for election workers may not be more than 15 days before an election.

The committee recommends House Bill No. 1054, relating to the appointment, duties, and compensation of election officials. The bill requires the county auditor to appoint the election inspectors. The selection must be made on the basis of the inspector's knowledge of the election procedure. The committee concluded the appointment should be made by the person mostly directly responsible for the election officials. The bill requires the county auditor to appoint the election judge if the political parties have not notified the auditor of their selection for election judge at least two weeks before the election. The bill changes the law to make it clear that the election inspector is to supervise the election process. The committee wanted to ensure that one person at each precinct polling place was responsible for seeing the election is properly conducted. The bill provides that election board members and poll clerks would be paid the minimum wage for the election and for training sessions in addition to election expenses and mileage; however, there is a limitation for combined wages for the training session and election not to exceed $60 for the judges and poll clerks. The committee concluded the election inspector should receive more pay since his or her responsibility for the election was greater. The committee decided to include pay for the training session to encourage attendance and thereby increase the competency of the election officials. The bill also authorizes the auditor to hold one or two training sessions.

The committee recommends two bills, Senate Bill No. 2066 and Senate Bill No. 2067, to require, in precincts in which electronic voting systems are used, that the ballot card contain the names of all candidates, the contents of the measures or a summary, and the statement of questions. The only difference between the bills is that Senate Bill No. 2066 requires this type of ballot card for all systems used in the state and Senate Bill No. 2067 requires that only systems purchased after June 30, 1985, must use this type of ballot card. These bills are in response to the disenfranchisement of voters in Grand Forks due to the design of the ballot label and card.

The committee recommends Senate Bill No. 2070 to provide that for any county election when the county is composed of more than one legislative district and the only item on the ballot is either a bond issue question or the election of a judge, or both, the county canvassing board must be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and one representative as appointed by the state chairman for each of the two political parties that received the highest number of votes cast for Governor at the most recent general election at which a Governor was elected. The committee determined this composition of the board would better ensure a quorum of the board for those one-issue elections which the representatives of district committees often do not attend.

The committee recommends Senate Bill No. 2069 to provide, at the option of the county auditor in any county using electronic voting systems or electronic counting machines, the county canvassing board, in lieu of the election boards, may canvass the votes for those precincts using either system. The committee considered the use of one board for the whole county much more practical than requiring all election boards in the precincts to canvass the votes.

The committee recommends Senate Bill No. 2068 to require that a rectangle must be printed on all ballots, ballot cards, and ballot envelopes, next to the language: "All ballots, other than those used to vote absentee, must be stamped and initialed by appropriate election officials in order to be counted." The bill requires the inspector or judge to stamp "official ballot" in the rectangle. Failure to stamp and initial a ballot or ballot card in the proper place would not invalidate the ballot or ballot card, but a complete failure to stamp and initial a ballot or ballot card would invalidate the ballot or ballot card. Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope would not invalidate the ballot

envelope, but complete failure to stamp and initial a ballot envelope that has been used to write in a vote would invalidate the ballot envelope and the vote found thereon. Because in every election there are some votes which cannot be counted because they are not stamped and initialed, the requirements of this bill are intended to make the election boards and the public more aware of the boards' duty to stamp and initial the ballots.

The committee recommends House Bill No. 1055 to provide for the appointment of election inspectors for four years. The requirement that the inspector be appointed for a longer period is intended to help the inspector gain experience and feel more responsible for the election process.

The committee recommends House Bill No. 1060 to remove the requirement that a county elect a public administrator and to authorize the county judge to appoint someone to that office. This change would remove an elective office which no longer seems necessary, which should result in greater efficiency in counting the ballots.

The committee recommends Senate Bill No. 2071 to ban electioneering within 300 feet of a polling place on election day and to repeal present provisions relating to electioneering.

PETITION REQUIREMENTS

Generally

Section 5 of Article I of the Constitution of North Dakota provides:

> 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. (emphasis provided)

A search of the North Dakota Century Code revealed 763 sections that dealt with a petition of one kind or another, with approximately 300 of those sections relating to the type of petition addressed by this study. The subjects covered by the petition requirements vary enormously.

The sponsor of House Concurrent Resolution No. 3055 testified that he noticed during the session that statutes containing petition requirements varied considerably concerning the terms used to define who is qualified to sign a petition. Examples of such terms are "qualified elector," "elector," "legal voter," "freeholder," and "owner." Approximately 185 sections related to the use of these terms. With the exception of "qualified elector," these terms are not defined in the Century Code. The committee decided not to address the terms such as freeholder and owner since they include a right to property which the other terms do not.

Referral and Initiative Petitions

Although the committee did not originally intend to do so, it examined the provisions of the Constitution of North Dakota and the statutes concerning referral petitions in some detail, due to three 1983 North Dakota Supreme Court decisions.

Haugland v. Meier, 335 N.W. 2d 809, concerned the decision of the Secretary of State approving the form of a petition referring the bill which changed the name of Minot State College and Lips v. Meier, 336 N.W. 2d 346, concerned the decision of the Secretary of State approving the form of a petition referring the bill which provided for the assumption by the state of jurisdiction over junior colleges and off-campus educational centers. The court set aside the decisions of the Secretary of State that approved referral petitions containing statements of intent. In Haugland the court said in a footnote regarding impermissible statements:

> The unfairness of a statement on a referral petition is not the sole cause for rejection of that petition. Neither the secretary of state nor this court should be in the position of exercising a subjective judgement in considering the form of the petition. Although an unfair statement designed to influence petition signers is objectionable, all extraneous statements are disapproved.

A second petition to refer the bill changing the name of Minot State College was filed and the Secretary of State's approval of the petition form was also subjected to a decision by the North Dakota Supreme Court in Haugland v. Meier, 339 N.W. 2d 100. The committee listened to the arguments before the Supreme Court in this case. The Supreme Court, in affirming the Secretary of State's approval of the referral petition, held:

1. The constitution implicitly requires that a referral measure be placed on the ballot at the next statewide election.
2. A properly filed petition suspends the bill even if the bill has gone into effect.

The Secretary of State informed the committee of the difficulties he has faced in approving or disapproving referral petitions because of the Supreme Court decisions and the lack of a proper petition form in the statutes. Several petitioners also testified it was difficult to obtain all the signatures of petitioners on one petition and to get the petition in the proper form.

The committee considered and rejected:

1. A draft of a resolution amending the state constitution to provide that a referred measure must be voted on at the next statewide election or special election. This is the interpretation the Supreme Court has given the present language in Section 5 of Article III of the Constitution of North Dakota.
2. A draft of a resolution amending the state constitution to provide a referred measure must be voted on at the next statewide general election or special election.
3. A draft of a resolution amending the state constitution to provide that a referred measure could be voted on at the next statewide primary or general election at the option of the petitioners or at a special election.
4. A draft of a resolution amending the state constitution to provide that the submission of a referendum petition before July 1 would suspend the operation of the measure except emergency measures or some appropriation measures. The submission of the petition on or after July 1 would not suspend the operation of the measure.

The committee concluded it was satisfied with the conclusion the court reached in the second Haugland v. Meier case, 339 N.W. 2d 100, and a change to the constitution was not necessary.

The committee also considered but rejected a draft of a resolution amending the state constitution to reduce from 90 to 45 days the time petitioners have to file a referral petition. The committee concluded it did not want to place this severe time limitation on petitioners.

Recommendations

The committee recommends House Bill No. 1059 to define the term "qualified elector" for petition purposes and to insert the term in lieu of such words as elector, people, legal voters, voters, bona fide electors, electorate, persons, eligible voters, signers, and citizens. "Qualified elector" is defined as a citizen of the United States who is eighteen years of age or older; and is a resident of this state and of the area affected by the petition.

The committee recommends House Bill No. 1058 to allow a sponsoring committee for a referred or initiated measure to use separate notarized signature forms when seeking approval of the petition. Testimony before the committee indicated it was difficult to obtain the necessary signatures on a single form. Petitioners from across the state had to meet at one location or someone had to travel the state obtaining the signatures.

The committee recommends House Bill No. 1057 to set forth a form for referendum and initiative petitions. The form includes:

1. A request to the Secretary of State by the sponsoring committee that the referred bill or initiated measure be on the ballot.
2. The names and addresses of the sponsoring committee.
3. The full text of the measure.
4. The names and addresses of the qualified electors signing the petition and the date of signing.

The bill also requires that if the measure amends the law, all new statutory material must be underscored and all statutory material being deleted must be overstruck by dashes. When repealing portions of the law, the measure must contain a repealer clause and, in brackets, the substance of the law being repealed.

The bill does not provide for a statement of intent in the petition and the bill forbids any such attachment to the petition because of the potential for abuse by the petitioners in slanting the statement to represent their view.

ENERGY DEVELOPMENT COMMITTEE

The Energy Development Committee conducted studies in two coal development-related areas as directed by the Legislative Council. House Concurrent Resolution No. 3036 directed a study of the impact of the privilege tax on coal gasification facilities and the allocation of the proceeds of the tax. House Concurrent Resolution No. 3101 called for study of the coal impact aid program administered by the Energy Development Impact Office.

Committee members were Representatives Richard Kloubec (Chairman), Clare H. Aubol, Ronald E. Gunsch, Walter R. Hjelle, Joe Keller, Donna Nalewaja, Alice Olson, Olaf Opedahl, Bob O'Shea, Allen Richard, Emil J. Riehl, Earl Strinden, and Mike Timm; and Senators Mark Adams, Shirley W. Lee, Rick Maixner, and Floyd Stromme.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

PRIVILEGE TAX ON COAL GASIFICATION FACILITIES

Background

The 1975 Legislative Assembly created the coal severance tax and the privilege tax on coal conversion facilities, commonly referred to as the coal conversion tax, in response to the rapid development of the coal industry in North Dakota. These taxes provide revenue to the state general fund and to coal-producing political subdivisions to deal with increased needs for local governmental services caused by coal development. These taxes are imposed in lieu of property taxes and the tax revenue returning to political subdivisions from these tax collections is the only direct local source of tax revenue from coal activity.

As enacted in 1975, North Dakota Century Code Section 57-60-02 provided a tax on electrical generating plants of one-quarter of one mill on each kilowatt hour of electricity produced for the purpose of sale and provided an alternative tax for coal gasification plants of the greater of 2.5 percent of gross receipts or 10 cents per 1,000 cubic feet of synthetic natural gas produced for the purpose of sale. The tax on electrical generating plants was increased by the 1983 Legislative Assembly to one-half of one mill per kilowatt hour of electricity produced but the tax on coal gasification facilities has remained unchanged since it was enacted. Thirty-five percent of coal gasification facilities tax revenues and 17.5 percent of electrical generating facilities tax revenues are allocated to the county in which the facility is located and the balance goes to the state general fund.

When the tax was enacted in 1975, coal gasification plants did not exist in North Dakota but were in the planning stages. In 1984 the Great Plains Coal Gasification Plant near Beulah began operation. Information furnished in 1982 by the Great Plains Gasification Associates Project (Great Plains) indicated gross receipts tax revenues of from $9 million to $15.8 million per year from 1985 through 1989. Based upon these estimates, the Mercer County 35 percent share of tax revenues would be from $3.1 million to $5.5 million in those years. In view of the high anticipated tax revenues from the gasification plant, the Legislative Council directed the committee to study the impact of the tax on coal gasification facilities and the allocation of the proceeds of that tax.

Testimony

The North Dakota Lignite Council believes future coal development projects will depend principally upon four factors. Economics, federal restrictions, state regulatory constraints, and taxation policies are taken into consideration prior to commencement of a coal conversion facility. The Lignite Council supports the present formulas for coal taxation and distribution of coal tax revenues. The Nokota Company informed the committee that it will begin construction of a methanol conversion plant in Dunn County in 1985. The company expressed no opinion on the coal conversion tax but does support the coal impact aid program.

Great Plains is presently studying the feasibility of Phase II of its project. The revenues to be generated by the project will be substantially less than had been projected at the time the loan guarantee for the project was approved. The reason for this, in simple terms, is that the price of synthetic natural gas is tied to the price of No. 2 fuel oil which has decreased considerably. Electrical generating facilities are taxed on the basis of units of production while gasification facilities are taxed on the basis of gross receipts or units of production, whichever is greater. The tax based on gross receipts is considerably greater than the tax which would have been based on units of production, due to great increases in the cost of energy since the time the law was enacted in 1975. The gross receipts tax includes all revenues of the plant, including sales of byproducts. Great Plains believes the inclusion of plant byproduct sales in the gross receipts tax was inadvertent and should be exempted and that statutes levying the coal conversion tax should be amended to recognize specifically different classifications for coal gasification facilities and electrical generating facilities. Great Plains recommended that separate chapters be created for taxation of coal gasification facilities and electrical generating facilities.

The principal byproducts of the Great Plains gasification process will be anhydrous ammonia, sulfur, carbon dioxide, crude phenol, and various gases from the oxygen plant. Great Plains provided estimates on revenues from sales of sulfur and ammonia but could not furnish estimates on revenues from sales of carbon dioxide, phenol, and miscellaneous gases because no sales contracts are in place and pricing information is uncertain. Great Plains is willing to report on byproducts to the Department of Health. The Great Plains plant is projected to operate at a loss for the next 10 years and Great Plains favors exemption of byproducts from the gross receipts tax to help minimize these losses. Great Plains agreed that during that time the Legislative Assembly will have an opportunity to review the operation record of the plant to determine the appropriateness of the exemption.

Great Plains' current projections indicate $5.3 million gross receipts tax for 1985, of which $112,000 would be attributable to sales of byproducts. For 1986, it is projected that the plant will pay $6.1 million in gross receipts taxes, of which $132,500 would be attributable to taxes on sales of byproducts. For 1987, $7 million is the projected gross receipts tax, of which $155,000 is projected as taxes on sales of byproducts.

These projections are the most recent available but in recent years revenue projections for the Great Plains project have been revised steadily downward.

The North Dakota Lignite Council supports the exemption for byproducts of the gasification process and encouraged the state to adopt a policy to encourage growth of the coal industry.

Recommendations

The committee makes no recommendation for limitations on county revenues from taxes or changes in the rates of taxes imposed on coal gasification facilities. Information provided to the committee indicates that projected tax revenues from the gasification plant are uncertain and likely to decrease and the committee determined that the Legislative Assembly should await figures from actual operation of the plant before determining whether changes in the tax rate or allocation formula are necessary.

The committee makes no recommendation for division of the taxation of electricial generating plants and coal gasification plants. The committee was requested to propose legislation to separate the taxation of these two types of coal conversion facilities so that legislative deliberations affecting one tax would not necessarily affect the other, but the committee determined that separate chapters on taxation would be duplicative and coal gasification facilities and electrical generating facilities are already taxed differently.

The committee recommends House Bill No. 1061 to exempt the byproducts of the gasification process from the gross receipts tax imposed upon coal gasification facilities. The committee found that plants which generate electricity from coal are taxed only for electricity produced and determined that plants which produce gas from coal should be taxed only for gas produced. In addition, the committee was informed that the gasification plant will operate at a considerable revenue loss for at least 10 years, during which sales of byproducts will be monitored. The bill includes a requirement that total production of byproducts be reported annually to the Department of Health by the operator of any gasification plant.

COAL IMPACT AID PROGRAM

Background

The 1975 Legislative Assembly created the coal severance tax and the coal impact aid program to be administered by the Coal Development Impact Office. Coal development impact funding was set by statute at a level of 35 percent of the coal severance tax collected which was to be distributed through the impact program to political subdivisions negatively affected by coal development. The 1975 Act allocated five percent of coal severance tax revenues directly to producing counties. The 1975 Legislative Assembly appropriated $2 million from the coal trust fund to the Regional Environmental Assessment Program (REAP) to project impacts of development from coal on western North Dakota. The REAP program was terminated in 1979.

The 1977 Legislative Assembly increased from five to 20 percent the revenues allocated directly to political subdivisions from the coal severance tax. The 20 percent share of coal severance tax revenues was allocated within each county among county government, school districts, and cities. Previously, the entire amount was allocated to the county government. In 1977 the coal development trust fund portion of tax revenues was reduced from 30 percent to 15 percent of the total. The Legislative Assembly provided that the money in the trust fund, which is managed by the Board of University and School Lands, could be offered through low interest loans to political subdivisions in the coal impact region. Repayment of loans must come from the political subdivision's share of future coal severance tax revenues.

The 1979 Legislative Assembly removed the Coal Development Impact Office from the jurisdiction of the Governor and placed the office under the Board of University and School Lands. The director of the Coal Development Impact Office was directed to establish guidelines and policies for operation of the office and was charged with the responsibility to make impact grants after assessing grant requests. The 1979 Legislative Assembly passed a resolution placing the question of whether the coal trust fund should be made a constitutional trust fund on the general election ballot in 1980. The voters approved the creation of a constitutional trust fund, with interest from the fund to be deposited in the state general fund. The loan program for coal-impacted subdivisions has been continued by the Legislative Assembly as an acceptable use of the trust fund.

Legislation in the 1981 Legislative Assembly relating to energy dealt mainly with greatly increased oil development in the state. The Legislative Assembly appropriated $10 million for an oil impact grant program and renamed the Coal Development Impact Office the Energy Development Impact Office to administer both oil and coal impact grants. The 1981 Legislative Assembly appropriated $12 million from the coal development fund for grants to political subdivisions impacted by coal development.

The 1983 Legislative Assembly provided that for the 1983-85 biennium, from the 35 percent share of severance tax revenues allocated for grants, $14.8 million is allocated for grants and after that amount is reached $1.5 million would be allocated to the state general fund. Any amounts in excess of the amount distributed to the general fund would again be allocated to the grant program. The coal severance tax rate is presently $1.04 per ton, and it was projected that total coal severance tax revenues for the 1983-85 biennium would exceed $50 million.

Testimony

The North Dakota Lignite Council expressed support of the present system of revenue distribution for coal taxes. If impact is winding down the council believes a reduction of the coal severance tax would be in order rather than a change in the distribution of the tax. It was pointed out that coal taxes have remained the same or decreased in Montana and Wyoming while North Dakota coal taxes have increased. The 1983 increase in North Dakota's coal conversion tax was described as causing an effective increase of 30 cents per ton on coal mined and converted into electricity. The coal industry in North Dakota was described as having a difficult time competing with the coal industry in surrounding states and lost jobs and lost tax revenue are the result. The council expressed belief that a lower tax rate could help the North Dakota lignite industry compete. The council expressed support of the impact program in its present form.

The committee received extensive testimony from the Energy Development Impact Office and toured the

coal impact area with the director of the impact office to view impact and projects funded by coal impact moneys. The committee received detailed information on all coal grants since the inception of the program, local property tax and bonding efforts within the coal development area, the manner in which grant requests are assessed, and the types of impact that communities experience from coal development.

During fiscal years 1976-1983, the coal impact grant program awarded a total of more than $31 million in grants in the coal impact area. Of the total amount awarded in grants 29.2 percent went to counties, 28.7 percent went to school districts, and 37.1 percent went to cities. The remaining five percent was divided among city park districts, airport authorities, townships, and fire districts. Of the coal impact grants awarded from 1976-1983, 29 percent were allocated for building construction, 18 percent for water and sewer systems, 16 percent for street and road construction, 15 percent for personnel, 10 percent for vehicles and equipment, and five percent for renovation and remodeling of existing facilities.

The committee requested and received information comparing the property tax effort made by local residents in counties within and without the coal development area. The Property Tax Division of the State Tax Department was unable to express an opinion from the data collected whether a greater property tax effort is being made inside or outside of the coal development area. Information provided by the Energy Development Impact Office comparing Mercer County to statewide averages indicates that Mercer County taxes and special assessments increased 150 percent from 1976 to 1982 compared to a 62 percent increase statewide during the same period. For the same period Mercer County payments on indebtedness increased 174 percent compared to an 87 percent increase statewide.

The committee received detailed information on Mercer County from the Inter-Industry Technical Assistance Team (ITAT), a joint effort of Basin Electric Power Cooperative, Great Plains Gasification Associates, and Coteau Properties Company. ITAT is an ongoing effort to keep current information available to coal industry representatives. The ITAT reports reviewed by the committee presented information on households, population, school enrollment levels, and impact mitigation programs and funding from all sources. The information projected population and school data through 1990. The projections indicate that Mercer County population will decrease approximately 20 percent from 1983 to 1990 but Mercer County public school enrollment will increase approximately 76 percent during the same period. The reason expressed for the reverse trends in population and school enrollment is that much of the temporary construction work force composed largely of single men will be leaving the area and the permanent work force comprised mostly of workers with families will be arriving and remaining in the area.

The committee received extensive testimony from representatives of schools and city and county governments within the coal development area. These individuals detailed the difficulties faced by their political subdivisions in dealing with increased demands for governmental services due to coal impact. They documented increases in local taxing and indebtedness and population since the beginning of increased coal development activities. They expressed satisfaction with the way the coal impact program presently functions. Representatives of political subdivisions testified that they are not asking the Legislative Assembly for additional grant moneys, but they do request that grant moneys not be cut because there is still great need for funding to offset coal development impact.

The committee reviewed proposals for allowing impact grant moneys to be used to fund coal development research projects. Testimony in support of this proposal indicated that research could create additional jobs and boost the economy by developing other industries as a side benefit of coal development and improve the efficiency of the coal industry's reclamation and conversion processes. Testimony in opposition to the proposal indicated that a considerable amount of private research on coal development is already being done. Officials of political subdivisions in the coal impact area objected to utilizing grant moneys to fund research because it is their position that grant moneys are still required to offset coal impact.

The committee reviewed proposed alternatives to impose limitations on revenues to political subdivisions from the tax on coal gasification facilities. Officials of subdivisions within the coal development area opposed this proposal and other testimony indicated that revenue projections for taxes on the coal gasification facility in Mercer County are speculative and likely to be revised downward.

The committee reviewed a proposal to limit the amount which could be loaned from the coal development trust fund. Alternative limitations were considered but testimony indicated opposition to the limitations and that only approximately half of the money available in the fund for loans is presently loaned out.

Conclusion

The committee makes no recommendation for change in funding, operation, or aims of the coal impact program. All testimony received by the committee showed strong support for the coal impact aid program as it is presently constituted and, although the committee considered proposals to allow grant moneys to be used for research grants and to impose limitations on the loans available through the coal development trust fund, the committee chose to make no recommendation for change in the program.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Garrison Diversion Overview Committee originally was a special committee created in 1977 by House Concurrent Resolution No. 3032 and recreated in 1979 by Senate Concurrent Resolution No. 4005. In 1981 the 47th Legislative Assembly enacted North Dakota Century Code Section 54-35-02.7 which statutorily creates the Garrison Diversion Overview Committee. The committee is responsible for legislative overview of the Garrison Diversion Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Section 54-35-02.7 directs that the committee consist of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore from the Senate selected at the end of the immediately preceding legislative session, and the chairman of the House and Senate standing committees on natural resources. Those committee members were Senators Rolland W. Redlin (Chairman), William S. Heigaard, Shirley W. Lee, Gary J. Nelson, and David E. Nething; and Representatives Richard J. Backes, Jim Brokaw, Tish Kelly, William E. Kretschmar, Corliss Mushik, and Earl Strinden.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

LEGAL ISSUES

In discharge of its reponsibilities of legislative overview, the committee was briefed on several occasions. Legal counsel for the Garrison Diversion Conservancy District informed the committee throughout the interim on the progress of the litigation surrounding the project. Following is a discussion of the lawsuits and their status through August 1984:

I. James River Flood Control Association v. Clark, et al., No. 81-1012, U.S. District Court for the District of South Dakota (Judge Porter).

A. **Purpose of Garrison Diversion Conservancy District (GDCD) Involvement in the Litigation:**
The James River Flood Control Association seeks to stop all construction on the Garrison Diversion Unit (GDU) until the phased development plan is reauthorized by Congress. The GDCD has intervened to assert the state and GDCD position and to resist any effort to stop or delay project construction.

B. **Status of the Case:**

1. United States District Judge Porter declared that the environmental impact statements are adequate and that the United States was not proceeding with the state's phased development proposal. The James River Flood Control Association complaint was, therefore, dismissed. The association appealed to the United States Court of Appeals for the Eighth Circuit.
2. The Court of Appeals remanded the entire case, at the request of the association, to the district court. The association had informed the court of appeals that the Department of the Interior had formally adopted a phased development concept for the GDU (the Assistant Secretary of the Interior had signed the "Record of Decision" in August 1983). The district court earlier declined to rule on this issue because the court determined that the department had not yet approved a phased development plan.
3. The association has filed a third motion for a preliminary injunction. The federal defendants and the GDCD have filed a response supported by numerous affidavits of federal, state (North Dakota and South Dakota), GDCD, and local officials.
4. The GDCD and federal defendants filed summary judgment motions (October 17, 1983) which state that there are no material disputed facts and that the court should now rule on the merits against the association as a matter of law.
5. Judge Porter stated that he will rule on the record without a hearing. He has also suggested, in a telephone conference with all attorneys, that the association has not proven that the phased development plan is contrary to the 1965 authorization.
6. Judge Porter has recently inquired about the GDU appropriation bill and the 12-member commission. Status reports concerning the commission have been filed with the court. It is possible that the GDU appropriation bill may affect the progress of this case.

II. 101 Ranch v. United States, No. A2-81-89, U.S. District Court for the District of North Dakota (Judge Benson).

A. **Purpose of GDCD Involvement in the Litigation:**
This is a quiet title action concerning about 11,000 acres of lakebed in West Bay of Devils Lake. The land was conveyed by the GDCD to the United States in 1971 as a nonfederal cost-sharing payment for the GDU. The plaintiffs (101 Ranch and others) also claim the land. The state and the GDCD have intervened as defendants to assert claims of state ownership over the lakebed and to protect the monetary credits received as a result of the conveyance.

B. **Status of the Case:**

1. The district court has already ruled that the State of North Dakota acquired, at the time of statehood, title to the Devils Lake bed up to the meander line.
2. There will be further proceedings to determine the validity of the individual plaintiffs' claims, particularly claims based upon quiet title actions and adverse possession. The GDCD filed a motion for partial summary judgment (along with supporting affidavits and exhibits) on November 15, 1983. All briefing has been completed but no hearing has been scheduled.
3. The Devils Lake Sioux tribe has filed a motion to intervene in this case. The tribe is claiming that the lakebed is owned by the United States and held in trust for the tribe. The tribe is further claiming that the lake is within the Fort Totten Indian Reservation. The state and the GDCD have filed briefs opposing the motion to intervene. A hearing has not yet been scheduled on the motion.

III. In the Matter of the Ownership of the Bed of Devils Lake, Civil No. 12121, N.D. District Court (Ramsey County).

A. **Purpose of GDCD Involvement in the Litigation:**

This quiet title case is a class action concerning ownership of the bed of Devils Lake below the meander line. The state and the GDCD have intervened to assert claims of state ownership over the lakebed.

B. **Status of the Case:**

1. The GDCD will file a motion for partial summary judgment on the navigability and the meander line issues (the same procedure used in 101 Ranch).
2. The Devils Lake Sioux tribe has indicated that it will not intervene in the case.
3. The attorney for the class has indicated that he may remove the entire case to the federal district court.

IV. State v. Hoge, Civil No. A1-83-42, U.S. District Court for the District of North Dakota (Judge Van Sickle).

A. **Purpose of GDCD Involvement in the Litigation:**

This is a quiet title action to determine the ownership of the bed of Painted Woods Lake. Determination of the lakebed ownership is essential for the project to discharge excess water from the McClusky Canal into the Missouri River through Painted Woods Creek. The state and GDCD initiated this action to assert its claim over sovereign trust lands (lakebed) and to assist in the management of the McClusky Canal.

B. **Status of the Case:**

1. The district court has ruled that Painted Woods Lake was navigable in fact at the time of statehood and that, therefore, the state acquired title to the lakebed at the time of statehood. A motion to appeal separately this summary judgment decision has recently been denied.
2. A trial should be held this fall to determine the boundary (i.e., the ordinary high water mark) between the public lakebed and the upland owned by Hoge.

V. McLean County Water Resource District v. Hoge, Civil No. 12091, N.D. District Court (McLean County).

A. **GDCD Involvement in the Litigation:**

The GDCD is not a party to this condemnation action. However, the case is related to State v. Hoge because the water management project is needed for releases from the McClusky Canal.

B. **Status of the Case:**

1. This is a condemnation action to acquire easement right of way for the Painted Woods water management project.
2. Proceedings had been postponed because of State v. Hoge. However, litigation will resume this fall.

VI. Energy Transportation Systems, Inc. (ETSI) Litigation, U.S. Court of Appeals for the Eighth Circuit.

A. **Purpose of GDCD Involvement in the Litigation:**

This is a challenge by Missouri, Kansas, Iowa, and others to the use of Missouri River water by ETSI for coal slurry pipeline use. The litigation could affect state claims to Missouri River water.

B. **Status of the Case:**

1. The district court has ruled that the Bureau of Reclamation is not authorized to market water from the Oahe Reservoir. The district court further raised questions abut fiscal aspects of the Pick-Sloan program.
2. The GDCD has contributed funds for a "friend-of-the-court" brief which has been filed with the court of appeals. The brief explains the GDCD and state position concerning the Pick-Sloan program.
3. ETSI terminated plans for the coal slurry project in early August. It is uncertain what the court of appeals will do to the pending appeal as a result of ETSI's action.

VII. Platte River Power Authority v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the District of Columbia, No. 84-1189.

A. **Purpose of GDCD Involvement in the Litigation:**

The Platte River Power Authority claimed that power rates set by the Western Area Power Administration should not be based upon the concept of ultimate development of the Pick-Sloan plan, and Platte River challenged rates set by Western Area Power Administration utilizing the ultimate development concept of the Pick-Sloan plan.

B. **Status of the Case:**

1. The Federal Energy Regulatory Commission denied the Platte River challenge on February 17, 1984. A rehearing was also denied on April 19, 1984.
2. Platte River filed a "petition for review" with the court of appeals in May 1984.
3. The GDCD filed a motion to intervene in June 1984. The motion was granted.
4. The appellants have recently withdrawn the appeal and have indicated there will not be further challenges to the ultimate development concept.

THE GARRISON DIVERSION UNIT COMMISSION

For the fiscal year 1985 the water and energy appropriations bill, signed by the President on July 16, 1984, contained an agreement negotiated by Senator Andrews and representatives of the National Audobon Society to establish a commission to review the Garrison Diversion Unit.

The Garrison Diversion Unit Commission is a 12-member panel appointed by the Secretary of the Interior to reexamine plans for the GDU in North Dakota. The commission is directed to examine, review, evaluate, and make recommendations regarding the existing water needs of North Dakota and to propose modifications to the GDU before December 31, 1984. Construction on the project is suspended from October 1 through December 31, 1984.

Any recommendation of the commission must be approved by eight or more of the 12 members. Should the commission fail to make recommendation as required by law,Congress has authorized the Secretary

of the Interior to proceed with construction of the GDU as currently designed.

Congress directed the commission to consider 11 specific areas:

1. The costs and benefits to North Dakota as a result of the Pick-Sloan Missouri Basin program.
2. The possibility for North Dakota to use Missouri River water.
3. The need to construct additional facilities to use Missouri River water.
4. The municipal and industrial water needs and possibility for development, including quality of water and related problems.
5. The possibility of recharging the groundwater system for cities and industries, as well as for irrigation.
6. The current North Dakota water plan to see if parts of the plan should be recommended for federal funding.
7. Whether the GDU can be redesigned and reformulated.
8. The institutional and tax equity issues as they relate to the authorized project and alternative proposals.
9. The financial and economic impacts of the GDU, when compared with alternative proposals for irrigation and municipal and industrial water supply.
10. The environmental impacts of the water development alternatives, compared with those of the GDU.
11. The international impacts of the water development alternatives, compared with those of the GDU.

The commission members are:

Chairman, David C. Treen, former Governor of Louisiana.

Henry Bellmon, Oklahoma, a farmer since 1946. He has served as Oklahoma's Governor (1962-66) and United States Senator (1969-81) and has been a member of the Migratory Bird Conservation Commission.

William B. Ingersoll, Washington, D.C., a senior partner in the law firm of Ingersoll and Block. He is a founder and general counsel of the American Land Development Association.

Norman (Ike) Livermore, San Rafael, California, a member of the California Fish and Game Commission. A businessman and lumberman, he served as California's Secretary for Resources from 1967 to 1975 under then-Governor Ronald Reagan. He served as a director of the National Audubon Society and was a member of the advisory council of the Sierra Club Foundation and the Save the Redwoods League.

J. Gordon Milliken, Colorado, senior research economist and associate division head of the Denver Research Institute, University of Denver. Dr. Milliken is an expert on water resources economics and a recognized authority on the Pick-Sloan Missouri Basin program.

Patrick Francis Noonan, Washington, D.C., a business executive. He is chairman of the advisory committee of the American Farmland Trust and head of the Conservation Resources Group, Inc. He also is former president of The Nature Conservancy.

J.W. (Pat) O'Meara, Washington, D.C., executive vice president of the National Water Resource Association. A native of Nebraska, Mr. O'Meara served for 20 years with the Department of the Interior.

John Paulson, Fargo, North Dakota, retired editor of *The Forum,* largest newspaper in the state. He is well versed on all sides of the Garrison issue.

James G. Teer of Granger, Texas. Dr. Teer is a member of the board of directors of the National Audbubon Society and a director of the Welder Wildlife Foundation of Sinton, Texas.

Henry C. Wessman, a businessman and the mayor of Grand Forks, North Dakota. He was a member of the North Dakota House of Representatives in 1979-80.

John Whitaker, formerly of Maryland now residing in Yarmouth, Nova Scotia. Dr. Whitaker served as deputy assistant to the president for domestic affairs under President Richard M. Nixon and was Undersecretary of the Interior from 1973 to 1975.

Ann Zorn, Las Vegas, Nevada, former member of the Nevada Environmental Commission. She is active in environmental issues in that state and is a member of the League of Women Voters.

Governor Olson responded to the commission by establishing an Executive Coordinating Council "to oversee and direct the official response to and participation of the state in the proceedings of the Garrison Diversion Unit Commission." Members of the council are Gary S. Helgeson, Vern Fahy, and Murray G. Sagsveen.

The commission held its organizational meeting on August 30, 1984, in Washington, D.C., and its first public hearing in Bismarck on September 10-11, 1984. The commission also took a short helicopter tour of the Garrison Diversion Project on September 10.

Fourteen representatives of state government testified before the commission concerning their support for the project. The chairman of the committee, Senator Rolland Redlin, tesified as to the support the legislative branch has given the project since it was authorized by Congress. A copy of Senator Redlin's testimony is attached to this report.

The presentations of 40 other individuals supporting the project were coordinated by the North Dakota Water Users Association so as to present as much information to the commission as possible.

The state has also presented the commission with considerable written information concerning its support of the project.

An additional public hearing will be held on November 16-17 in Fargo to receive public comments on the draft of the commission report. On December 13 a public hearing will be held in Minot to receive comments on the commission's proposed recommendations.

UPDATES ON PROJECT

A representative for the United States Bureau of Reclamation briefed the committee on the contracts and features of the Garrison Diversion Project under construction. Five major contracts have been let for the project totaling approximately $35 million. Three of these contracts were let for the Oakes area pumping plant, its distribution system, and drainage system. One contract was let for beginning construction on the Lonetree Reservoir and one contract was let for work on the New Rockford Canal. Construction is suspended through December 31, 1984.

Legal counsel for the Garrison Diversion Conservancy District informed the committee in August 1984 that the most recent consultation with Canada resulted in a general agreement between the two governments that Phase I of the initial stage of the Garrison Diversion Unit could be constructed. Canada, however, remains firmly opposed to the construction of any features which could affect waters flowing into Canada.

Canada and the United States also agreed to focus on certain technical issues which will be the subject of future consultations. A press line, approved by representatives of Canada and the United States, explains the ongoing technical studies:

The two sides agreed to:

(A) Establish a joint technical committee, composed of senior technical representatives from the two federal governments, the Province of Manitoba and the State of North Dakota. The group would be charged with updating the common data base regarding the biota situation in the Missouri River and Hudson Bay drainage systems and reporting back to the consultative group in five months. At this time, the utility of the McClusky Canal fish screen will be further considered. The technical committee would also consider future project features and alert the consultative group to technical considerations related to whether and how to proceed with development. Finally, the joint group would also monitor features under design and construction and examine immediate Canadian technical concerns including the following: McClusky Canal fish screen, Lonetree Dam and Reservoir including municipal and industrial outlet, protection of essential seepage to Hudson Bay drainage basin, local irrigation along the McClusky Canal, New Rockford Canal, Warwick-McVille Irrigation Area, Oakes Canal and Thayer Reservoir; and, wildlife mitigation.

(B) Examine jointly with the USA development committee the 19 (sic) fish and wildlife plan for the GDU.

(C) Redesign the outlet on the Lonetree Dam to include a concrete plug, and

(D) Send a joint team to the McClusky Canal to examine the implications of the removal of plugs to allow for irrigation in the Missouri River system.

Former Secretary of the Interior Watt and Governor Olson appointed a six-member team with state and federal members to develop an acceptable mitigation plan for the project's first phase of 85,000 acres. A plan was developed based on the habitat evaluation procedure (HEP) which means that acres are evaluated for value of waterfowl production rather than taking acre for acre as has been done in the past. It is a federal policy that mitigation acres will be purchased only from willing sellers. The new mitigation plan development also necessitated the preparation of a supplemental environmental statement which was presented to the committee.

RELATIONSHIPS WITH CANADA AND DOWNSTREAM STATES

Former Governor William L. Guy asked the committee to consider two resolutions concerning the state's relationships with Canada and downstream states. The committee was told Canadian hydroelectric power is already being sent by transmission line to Northern States Power Company in Minnesota. Permits have been granted for a second high voltage transmission line to cross eastern North Dakota to bring Canadian hydroelectric power to Nebraska. A third high voltage transmission line is in the advance planning stage to cross North Dakota to bring power to the western area power administration grid. He said the Canadians are pricing their hydroelectric power just below the cost of generating electricity in coal-fired plants such as are now operating in this state. He said the planning and construction of these lines is imminent and should be taken into consideration in dealing with Canadian problems. He offered for the committee's consideration a resolution that the North Dakota Legislative Assembly take whatever action is necessary to bring about a condition and atmosphere of upstream and downstream reciprocity between North Dakota and Canada so that the water resource development in northern and east-central North Dakota can go forward and the United States can again consider use of Canadian hydroelectric power. The committee agreed that Canada should be made aware that there are mutually beneficial things in which Canada and the United States can participate.

Mr. Guy offered a second resolution for the committee's consideration that provides that the North Dakota Legislative Council do research to establish the amounts of annual benefits that accrue to downstream Missouri River states from free flood protection, river navigation without user fees, and disproportionately large shares of low cost hydroelectric generation, all made possible by the perpetual annual losses from reservoir inundated acres in upstream states including North Dakota; and that the North Dakota Congressional Delegation be requested to work with the Congressional Delegations from downstream Pick-Sloan Missouri Basin Program states to devise means which might include navigation user fees, flood plain taxation, and reallocation of low cost federal hydroelectric power to rekindle downstream interest in supporting benefits that would reduce the sacrifices being made by upstream states.

He proposed the resolution to awaken North Dakotans to the treatment they are getting from the people of downstream states, and to indicate to those downstream states that North Dakota does not intend to continue to subsidize downstream benefits without battling to cut our losses.

The committee agreed the downstream states should

be made aware of the sacrifices North Dakota has made but acknowledged there has been support from many organizations in the southern states. Committee members were concerned discussion of imposing user fees would inflame too many people.

COMMITTEE ACTION

The committee approved a resolution (attached to this report) that requests the North Dakota Legislative Assembly to take necessary action to bring about a condition and atmosphere of upstream and downstream reciprocity in the United States/Canadian drainage so that the water resource development in northern and east-central North Dakota can again go forward, and the United States can again consider the possible benefits to this country of the use of Canadian hydroelectric power.

The committee approved a resolution work that requests the North Dakota Congressional Delegation to work with the Congressional Delegations from downstream Pick-Sloan Missouri Basin program states to assist the North Dakota Legislative Council to do research to establish the amounts of annual benefits that accrue to downstream Missouri River states from free flood protection, river navigation without user fees, and disproportionately large shares of low cost hydroelectric generation, all made possible by the perpetual annual lossses from reservoir inundated acres in upstream states including North Dakota, and to rekindle downstream interest in supporting benefits that would reduce the sacrifices being made by upstream states.

TESTIMONY OF SENATOR ROLLAND W. REDLIN OF MINOT, NORTH DAKOTA, CHAIRMAN OF THE GARRISON DIVERSION OVERVIEW COMMITTEE BEFORE THE GARRISON DIVERSION STUDY COMMISSION SEPTEMBER 10, 1984

Mr. Chairman and members of the commission:

No doubt has ever existed regarding the overwhelming vote and support of the North Dakota Legislature for Missouri River water diversion to help the stabilization and growth of the state's total economy.

Over 30 times through the years, including the session of 1983, the legislature in biennial and special sessions has passed legislation and resolutions to enhance and support the use of the waters of the state, especially the Missouri River water and specifically the Garrison Diversion Project. I will file with the commission the complete text of these Acts and resolutions for the record. I will cover a few items at this time.

Just two years into statehood in 1891 the legislature created the Office of State Superintendent of Irrigation and Forestry with authority to seek development of a system of irrigation within the state and to cooperate with the U.S. Government to that end.

In 1935 construction of a Missouri River dam in North Dakota was supported by a legislative resolution citing drought, flooding, lowering ground water tables, and the benefits of directing reservoir water for irrigation, hydropower, industrial expansion, and waterfowl propagation. The dam and the reservoir itself were never singled out for development. The legislature continuously urged the completion of an entire diversion project whereby North Dakotans would be able to use the impounded waters. Such use was indeed mandatory for North Dakota to be adequately compensated for the adverse impacts of the reservoir itself.

History also indicates that the legislature has shown a constant and consistent concern for the environmental and economic problems that have confronted this project. In 1949 the legislature urged Congress and the Corps of Engineers to see that all persons affected by eminent domain because of the project are treated equitable and are fully compensated for their property. The legislature has supported the development of recreational opportunities and the enhancement of wildlife habitats within the diversion area; $275,000 was appropriated for such wildlife habitat enhancement in 1955.

To aid in the development and management of the Garrison Diversion Project, the legislature created the Garrison Diversion Conservancy District in 1955 citing the necessity for the project as follows:

a. To provide for the irrigation of lands within the sections of such district periodically afflicted with drought and to stabilize the production of crops.
b. To replenish and restore the depleted waters of lakes, rivers, and streams in such district and to stabilize the flow of such said streams.
c. To make available within the district water diverted from the Missouri River for irrigation, domestic, municipal, and industrial needs and for hydroelectric power, recreation, and other beneficial and public uses.

This governmental agency was given broad powers to aid in the completion and ultimate management of the project including the power to levy a tax to meet all obligations to the United States.

The 1977 legislature created the first Garrison Diversion Overview Committee with power to represent the legislature in activities concerning the Garrison Diversion Project. Missouri River diversion has been suggested since 1923 and support for the Garrison Diversion Project has been continuous since 1955.

Garrison Diversion was authorized by Congress in 1965. I was there and I did not expect to see 1984 arrive with little or no benefits to my state. Garrison Dam was closed on April 15, 1953, which started the permanent flooding of 500,000 acres in this state to provide navigation, flood control, and power for downstream states. The cry goes on in my state, "How long, oh Lord, how long must we wait?"

My family farm is less than 20 miles from the Canadian border. We have learned that reciprocal concern is the key to living as neighbors. My hope is that everyone will work to solve problems because the Missouri River flow is 96 percent of the flow of our state and must be the source of supply. We cannot stonewall this situation any longer.

A recent NBC TV Sunday night special on water dealt at some length with the Mississippi River. Barge traffic and flood control were featured. Much was made of levies and retaining walls without once mentioning the control structures on the major tributaries of the Mississippi such as Garrison Dam in our state which are the major reaons for the tamed and controlled flow of the Mississippi. Small wonder that downstream friends are oftentimes unaware of the sacrifices of upstream citizens.

Completion of the Garrison Diversion Project will help mitigate the adverse impacts already suffered by

the flooding of Garrison Reservoir and construction of the McClusky Canal. The people of North Dakota would never have permitted the construction of Garrison Dam had they had any reason to believe that they would be denied the beneficial use of the water contained in the reservoir. The people of North Dakota speaking through their legislators ask for the timely completion of the Garrison Diversion Project. We believe we have a commitment from the United States, and we believe we have made the sacrifices asked of us.

RESOLUTION

WHEREAS, North Dakota has sought, since the Flood Control Act of 1944, to divert water from the Missouri River for beneficial purposes into water-short areas in the upstream United States/Canadian drainage in the northern and east-central parts of the state by what has become known as the Garrison Diversion Project; and

WHEREAS, Canada and Manitoba have sought to kill the Garrison Diversion Project saying it could be a possible source of transfer of Missouri River aquatic life to the United States/Canadian drainage; and

WHEREAS, Canada and Manitoba oppose the Garrison Diversion Project on the grounds of possible negative environmental effects and on the possible adverse economic effect to Canadian fishermen; and

WHEREAS, Canada and Manitoba now seek to enlarge the beneficial use of their downstream United States/Canadian drainage water to generate hydroelectricity for transmission across and sale in upstream North Dakota; and

WHEREAS, the transmission of Canadian hydroelectricity imposes negative environmental effects from towers and power lines across the farms of this upstream state; and

WHEREAS, the sale of downstream-generated Manitoba hydroelectricity in North Dakota would reduce the demand for coal-fired electric generation and would cause the adverse economic effect of throwing North Dakota people out of work in the coal mining and coal conversion industries in this upstream state, and would reduce tax revenues to the state and local governments; and

WHEREAS, the Garrison Diversion Overview Committee believes that midcontinent international upstream and downstream water-related development should take place in an atmosphere of mutual understanding and recognition of mutually beneficial tradeoffs;

NOW, THEREFORE, BE IT RESOLVED BY THE GARRISON DIVERSION OVERVIEW COMMITTEE:

That the North Dakota Legislative Assembly be respectfully requested to take whatever action is necessary to bring about a condition and atmosphere of upstream and downstream reciprocity in the United States/Canadian drainage so that the water resource development in northern and east-central North Dakota can again go forward, and the United States can again consider the possible benefits to this country of the use of Canadian hydroelectric power.

GOVERNMENT REORGANIZATION COMMITTEE

The Government Reorganization Committee was assigned three studies. House Concurrent Resolution No. 3068 directed a study of the methods and practices of providing for more efficient and prompt collection of taxes by the state. The study resolution states that particular emphasis should be given to consideration of a system for tax deposit by taxpayers and the transfer of tax revenues through financial institutions. Senate Concurrent Resolution No. 4007 directed a study of the feasibility of combining the Department of Labor, Job Service North Dakota, Workmen's Compensation Bureau, and other state agencies whose primary responsibilities are related to labor and employment services. Senate Concurrent Resolution No. 4043 directed a study of the financial management and administrative services of state government including the functions and services of the State Treasurer, Office of Management and Budget, State Tax Commissioner, Bank of North Dakota, State Auditor, Board of University and School Lands, and Director of Institutions.

Committee members were Senators Clayton A. Lodoen (Chairman), Jan Dykshoorn, Chuck Goodman, Duane Mutch, John M. Olson, and Bryce Streibel; and Representatives Ronald A. Anderson, Aloha Eagles, William G. Goetz, Theodore A. Lang, Rodney A. Larson, Bruce Laughlin, Clarence Martin, Marshall W. Moore, Alice Olson, Elmer Retzer, John T. Schneider, George A. Sinner, Oscar Solberg, Mike Timm, and Thomas C. Wold.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

EFFICIENT AND PROMPT COLLECTION OF TAXES

Background

House Concurrent Resolution No. 3068 directed a study of the methods and practices of providing for more efficient and prompt collection of taxes by the state. The resolution states that the study is desirable because the present tax collection system involves considerable delay in receipt by the state of tax revenues; the state presently spends substantial amounts of time and money in collection of these tax revenues; and the federal government presently collects taxes from businesses using a tax deposit system which might be adapted by the state to accelerate revenue collections.

The committee reviewed legislation which was considered by the 1983 Legislative Assembly dealing with more efficient collection of taxes and the accelerated collection of taxes. House Bill No. 1499, defeated by the 1983 Legislative Assembly, would have required certain retailers and motor vehicle or special fuel dealers to deposit, on or before the 15th day of each month, at least 90 percent of the sales and use tax or fuel tax due for the preceding month in the account of the Bank of North Dakota at a depository within the state. House Bill No. 1727 was passed and generally provided for the monthly collection of sales and use taxes, oil and gas gross production taxes, oil extraction taxes, coal conversion taxes, and coal severance taxes.

The committee determined that the study resolution (HCR 3068) does not address a study of the accelerated collection of taxes, but addresses only the quickness with which tax deposits are received by the state. For example, sales and use tax payments are presently mailed by taxpayers, which can result in a delay of a number of days between the day of payment and the day of collection by the state. The committee proceeded to explore alternatives to provide for more prompt collection of tax payments.

Alternative Methods of Collecting Taxes

The committee reviewed information regarding a lockbox system and electronic funds transfer systems, two methods of collecting taxes which were determined to have applications suitable for state purposes.

Utilization of a lockbox system would require license fees or tax payments to be sent to a designated post office box. A lockbox bank would empty the post office box several times each day, clear the deposited checks daily, and transfer the available funds to the Bank of North Dakota. The documentation on the receipts would be forwarded by the lockbox bank to the appropriate state agency such as the Tax Department. Two advantages of the lockbox system are the reduction of float (funds in the process of collection) and the substitution of the bank's processing techniques for the agency.

Electronic funds transfer systems utilize advanced computer and communications technology to expedite the transfer of money without the paper instruments. Various devices used for electronic funds transfer systems include automated clearinghouses, automated teller machines, telephone bill payments, and wire transfers.

Tax Collection Methods Used in North Dakota and Other States

The North Dakota Tax Department color codes all major tax returns. These returns are color sorted in the central mailroom and the envelopes are opened by machine. The returns are reviewed for completeness, prioritized, and batched for processing with 100 returns per batch. Validating equipment is used to print a batch number, return number, date, tax type, and amount on the return and the check. The Tax Department is changing over to new validating equipment which will also endorse the checks. Moneys received are usually deposited in the Bank of North Dakota the day following receipt. During peak periods deposits have taken up to two days. If a check or a series of checks totaling $1 million is received, the policy is to deposit the money the same day it is received.

The Department of Revenue and the Department of Business and Labor in the state of Washington have used the lockbox system for collecting revenues for the last three years. They use a bid procedure to choose the lockbox bank. The agency has specifications that list the requirements to be fulfilled by the bank. The contract is renegotiated every two years. Washington also uses wire transfers to receive moneys collected by counties, and colleges and universities remit their tutition and fees by wire transfer.

Connecticut looked at using the lockbox, particularly for the collection of monthly sales and use taxes, but it was felt that the confidentiality of the tax return

would be violated. Instead, they have a "monthly task force" to process and deposit the sales and use taxes. This procedure allowed them to save from one to eight days in processing time.

The Tennessee Department of Revenue uses color and bar coded envelopes to identify the major tax categories. One of the bar and color coded envelopes used by the department was designated for sales taxes exceeding $2,000. These envelopes were mailed to taxpayers whose previous 12 monthly returns exceeded $2,000. These sales tax payments were expedited through the process in order to be deposited on the morning received. They also use a computer deposit system to expedite the processing function.

Minnesota uses a lockbox system for collecting employees' withholding taxes and is tentatively planning on expanding this to the collection of sales taxes and accounts receivable. Minnesota also uses separate post office boxes for some tax types together with color and bar coded envelopes to increase the efficiency of processing the returns. Processing is generally completed within 24 hours but can range from two to seven days during peak periods.

Testimony

The committee heard testimony from the North Dakota Retail Association that North Dakota's current method of collecting taxes is efficient and that utilizing a different method would result in minor monetary benefits to the state. The association also testified that it would not like to see any further acceleration of tax payments to be made by groups such as the retailers.

Conclusions

The committee concluded that North Dakota's present tax collection system does not result in excessive delay in receipt by the state of tax revenues, and that there would not be sufficient benefits to the state for the committee to recommend a revision of the current remittance system.

LABOR AND EMPLOYMENT SERVICES

Background

Senate Concurrent Resolution No. 4007 directed a study of the feasibility of combining the Department of Labor, Job Service North Dakota, Workmen's Compensation Bureau, and other state agencies whose primary responsibilities are related to labor and employment services. The resolution states that a coordinated and cost-efficient effort may be better achieved by combining the efforts of these various agencies of government service. Also, the resolution requests the cooperation and assistance of the Commissioner of Labor, Job Service North Dakota, Workmen's Compensation Bureau, and any other appropriate state agencies.

Other than the Department of Labor, Job Service North Dakota, and the Workmen's Compensation Bureau, there were no state agencies identified by the committee as having primary responsibilities relating to labor and employment services.

Prior Legislation Relating to the Combining of Labor and Employment Agencies

The committee reviewed legislation which was previously considered by the Legislative Assembly relating to the combining of the Department of Labor and the Workmen's Compensation Bureau.

House Bill No. 755 was introduced in 1965 and would have made the Workmen's Compensation Bureau a division of the Department of Labor. The bill also provided for the three Workmen's Compensation Bureau commissioners to be appointed by the Labor Commissioner rather than by the Governor. House Bill No. 755 was defeated by the 1965 Legislative Assembly.

Senate Bill No. 358 was introduced in 1967 and would have placed the Workmen's Compensation Bureau under the supervision and control of the Commissioner of Labor. It also provided for the termination of the positions of Workmen's Compensation Bureau commissioners, and authorized the Commissioner of Labor to appoint an executive director of the bureau. Senate Bill No. 358 was defeated by the 1967 Legislative Assembly.

Statutory Duties of Agencies Providing Primarily Labor and Employment Services

The committee identified the Department of Labor, Job Service North Dakota (JSND), and the Workmen's Compensation Bureau as state agencies whose primary responsibilities are related to labor and employment services. Shown below are some of the major statutory duties and responsibilities and other background information for each of the agencies. The information was reviewed by the committee at its June 1983 meeting.

A. **Department of Labor — Major Statutory Duties and Other Information**

The major statutory duties of the Department of Labor are as follows:

1. Improve working conditions and living conditions of employees and advance their opportunities for profitable employment.
2. Foster, promote, and develop the welfare of both wage earners and industries in North Dakota.
3. Promote friendly and cooperative relations between employers and employees.
4. Cooperate with other state agencies to encourage the development of new industries and the expansion of existing industries.
5. Acquire and disseminate information on the subjects connected with labor, relations between employers and employees, hours of labor, and working conditions.

The total appropriation to the Department of Labor for the 1983-85 biennium is $500,580, of which $410,420 is from the general fund and $90,160 is from federal funds. The department is authorized funding for six full-time positions for the 1981-83 and 1983-85 bienniums.

B. **Job Service North Dakota — Major Statutory Duties and Other Information**

The major statutory duties of Job Service North Dakota are as follows:

1. Administer the provisions of the North Dakota unemployment compensation law and the provisions relating to the North Dakota state employment service, includng job insurance programs and the establishment and maintenance of free public employment offices.
2. Inform the Governor and the Legislative Assembly promptly if it believes that a change in contribution or benefit rates shall become necessary to protect the solvency of the unemployment compensation fund.

3. Appoint a state advisory council and local advisory councils.
4. Take appropriate steps, with the advice and aid of its advisory councils, to:
   a. Reduce and prevent unemployment.
   b. Encourage and assist in the adoption of practical methods of vocational training, retraining, and vocation guidance.
   c. Investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment.
   d. Promote the reemployment of unemployed workers throughout the state in every other way that may be feasible.
   e. Carry on and publish the results of investigations and research studies.
5. Administer the Old-Age and Survivor Insurance System.

Job Service is administered by a full-time salaried executive director, who is appointed by and subject to the supervision and direction of the Governor. The total appropriation to Job Service for the 1983-85 biennium is $24,182,227, with the entire appropriation to be provided by federal funds. The department was authorized funding for 454.8 full-time positions for the 1981-83 biennium; however, the number of positions filled was reduced during the course of the biennium due to a shortage of federal funds. The department is authorized funding for 325 full-time positions for the 1983-85 biennium.

C. Workmen's Compensation Bureau — Major Statutory Duties and Other Information

The major statutory duties of the Workmen's Compensation Bureau are as follows:

1. Administer the provisions of law relating to the Workmen's Compensation Act.
2. Submit a biennial report to the Governor and the Office of Management and Budget, including information on the following:
   a. A statement of the number of awards made by the bureau.
   b. A general statement of the causes of accidents leading to the injuries for which the awards were made.
   c. A detailed statement of the disbursements from the fund.
   d. A statement of the conditions of the various funds carried by the bureau.
3. Classify employments with respect to their degrees of hazard, determine the risks of different classifications, and fix the rate of premium for each of said classifications.
4. Administer the Uniform Crime Victims Reparations Act, which provides a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death.

The Workmen's Compensation Bureau is administered by three workmen's compensation commissioners who are appointed by the Governor. The Governor designates one commissioner as chairman of the bureau. The total appropriation to the Workmen's Compensation Bureau for the 1983-85 biennium is $4,009,657, which is to be provided from the workmen's compensation fund. The bureau is authorized funding for 63 full-time positions for the 1983-85 biennium.

Consolidation of Labor and Employment Services in Other States

At the August 1983 meeting, the Department of Labor reported that the Workmen's Compensation Bureau, JSND, and the Department of Labor are combined into one department in at least 21 states and that two of the agencies are combined in 10 other states. The committee reviewed some of the information received by the Departments of Labor from Montana, Utah, Missouri, Alaska, Colorado, and Hawaii, which have all been involved in merging labor and employment services or agencies.

The committee reviewed the information from other states to determine if those states have been able to combine functions such as:

1. Auditing payroll records for compliance with unemployment insurance, workmen's compensation, and wage and hour regulations.
2. Holding administrative hearings on job insurance and workmen's compensation claims.
3. Providing for state and/or local advisory councils.
4. Providing a central location for filing claims.

Feasibility of a Combined Reporting Form

At the August 1983 meeting, the committee gave some consideration to the possibility of combining claim and reporting forms for JSND, the Workmen's Compensation Bureau, and the Department of Labor. The primary purpose of combining forms would be to simplify the reporting process for the employer community and also to realize the potential cost savings to government. The committee requested information on the feasibility of combining claim and reporting forms and, if feasible, to determine if and what statutory changes would be necessary to combine the forms.

Job Service North Dakota indicated that nearly 19,000 employers are reporting wages paid under the North Dakota unemployment compensation law, and that no employers are delinquent in filing wage reports within 60 days of the due date. This would mean that wage information would also be available to the Workmen's Compensation Bureau on these workers. Job Service North Dakota also reported that 750 to 800 employer accounts are audited each year, and that a properly designed audit form and procedure would gather sufficient information to provide both JSND and the Workmen's Compensation Bureau with an acceptable audit.

Job Service North Dakota reported that it has currently identified six areas where there are variations in reporting requirements between JSND and the Workmen's Compensation Bureau. These variations would have to be resolved either administratively or by legislation before reporting forms could be combined. The variations are as follows:

1. JSND — A child under the age of 18 in the employ of mother or father is exempt.
   Workmen's Compensation Bureau — Unmarried family members living at home are exempt.
2. JSND — Corporate officers performing services for a wage are taxable. Sole proprietors and partners are exempt.
   Workmen's Compensation Bureau — Corporate officers and self-employed employer coverage is optional.

3. JSND — Agricultural coverage mandatory if farm employs 10 or more workers in 20 different weeks or if they have a quarterly cash payroll of $20,000. Others may voluntarily elect coverage.
   Workmen's Compensation Bureau — Agricultural coverage is optional.
4. JSND — Volunteer workers are exempt.
   Workmen's Compensation Bureau — Volunteer workers (e.g., volunteer firemen or ambulance drivers) can elect coverage.
5. JSND — Employers of multistate workers may request all states to agree to permit wages to be reported to only one state.
   Workmen's Compensation Bureau — Has a voluntary coverage which may cover employees working out of state for North Dakota employers.
6. JSND — Employers report workers' wages quarterly.
   Workmen's Compensation Bureau — Have a variable year-end date.

Testimony

During the interim, the committee heard testimony from the Department of Labor, JSND, and the Workmen's Compensation Bureau in regard to the feasibility of combining these agencies and in regard to the feasibility of combining functions such as reporting forms and auditing payroll records. Also providing testimony to the committee were representatives of the North Dakota Retail Association, Teamsters Union, AFL-CIO, Associated General Contractors of North Dakota, and Northwestern Bell.

The Department of Labor supported the consolidation of client services provided by the three agencies, if such a consolidation would save money for the taxpayers and at the same time provide those services in a more efficient manner. The Commissioner of Labor said the three agencies will eventually be merged into one agency.

In regard to the feasibility of JSND combining with the Department of Labor and the Workmen's Compensation Bureau, JSND expressed concern about being identified too closely with those two agencies since JSND is a labor exchange providing a service to both workers and employers and the other two agencies have law enforcement and inspection functions. Job Service North Dakota reported that it would be difficult, if consolidated, to be enforcing the law or conducting inspections on one day and to offer labor exchange and training functions the next day.

Job Service North Dakota reported that it has held meetings with the Workmen's Compensation Bureau and members of the North Dakota Retail Association during the past year in an effort to eliminate administrative duplication, and that it appears that a major area of duplication is between the job insurance program and workmen's compensation. Job insurance and workmen's compensation are both insurance-type programs that are based on wages paid to covered employees and financed by a tax paid by the employer community, and those who benefit from both of the insurance programs are the working people of North Dakota. Job Service North Dakota reported that it seems that many of the reporting, collecting, and auditing functions associated with these two programs could be administratively combined, and that JSND and the Workmen's Compensation Bureau are currently working on ways to eliminate duplication between these two programs.

Job Service North Dakota said there are a number of other related functions involving the three agencies which could be administratively combined to realize cost savings. Job Service North Dakota said that in consideration of the many problems and the high initial costs of combining the three agencies, the state could probably save more money by administratively combining as many functions as possible.

Job Service North Dakota reported that its current building could not hold all the employees if the three agencies were combined and that all three agencies would have to relocate. Job Service North Dakota also reported that the federal government has strict requirements relating to JSND's functions and its expenditure of funds. A specific regulation of the United States Department of Labor states that the federal funds received by JSND cannot be used for the general expenses required to carry out the overall responsibilities of state or local governments.

The Workmen's Compensation Bureau testified that it is entirely self-supporting from its own fund, and there should be no commingling of workmen's compensation funds with funds of JSND, since the workmen's compensation fund is not a fund of the state.

In regard to the feasibility of combining the Workmen's Compensation Bureau with JSND and the Department of Labor, the bureau said it does not see any particular benefits that would be achieved by this combination, and that a combination of the agencies is not necessary to eliminate duplication between agencies. The bureau reported that although the many differences in coverage between Job Service and Workmen's Compensation has made it appear very difficult to provide a combined reporting form for employer payroll reports, it is evident that information sharing between the agencies would help to eliminate the need for duplication of audits of employer accounts.

The Workmen's Compensation Bureau reported that it is committed to the principle of providing efficient and economical service to the people of North Dakota, and that this can best be achieved by maintaining the Workmen's Compensation Bureau as an autonomous agency. The bureau reported that it is already in the process of coordinating its efforts with JSND in providing labor and employment services.

The general comments of the representatives testifying on behalf of the North Dakota Retail Association, Teamsters Union, AFL-CIO, Associated General Contractors of North Dakota, and Northwestern Bell were that the workmen's compensation fund should not be commingled with other funds; the larger an agency becomes, the less responsive it is to the needs of individuals; and that cooperation between the three agencies could be enhanced and paperwork could be reduced without the agencies being consolidated.

Conclusions and Recommendations

The committee concluded that most of the areas of duplication between the Department of Labor, JSND, and the Workmen's Compensation Bureau could be eliminated administratively and that a consolidation of the three agencies is not necessary at this time.

The committee recommends Senate Concurrent Resolution No. 4006 to direct the Department of Labor, Job Service North Dakota, and the Workmen's Compensation Bureau to coordinate their efforts in

providing labor and employment services, with special emphasis given to combining reporting forms and resolving variations in statutory reporting requirements; combining payroll auditing functions; sharing office space; and combining administrative and data processing services. The resolution also directs the three agencies to report on their progress in implementing these recommendations, and to recommend any legislation necessary for implementation to the Legislative Council, or any committee the Legislative Council designates, during the 1985-86 interim.

At the April 1984 meeting, the committee asked the Department of Labor, JSND, and the Workmen's Compensation Bureau to present their current proposals for legislation to be considered by the 1985 Legislative Assembly which would help improve the efficiency and effectiveness of their departments and would remove any statutory restrictions in areas such as joint auditing and combined reporting.

The Workmen's Compensation Bureau, on behalf of the three agencies, recommended legislation which would amend North Dakota Century Code (NDCC) Section 65-04-15, relating to the release of payroll information from employers. It was reported that the 1983 Legislative Assembly passed a bill allowing the sharing of information between JSND and the Workmen's Compensation Bureau, thus removing the biggest barrier to communication between the two agencies. The bureau reported that the legislation being recommended would remove any further statutory restrictions on communication between the Department of Labor and the Workmen's Compensation Bureau.

The committee recommends Senate Bill No. 2073 to allow the sharing of payroll information data between the Commissioner of Labor and the Workmen's Compensation Bureau.

The committee commended the Department of Labor, Job Service North Dakota, and the Workmen's Compensation Bureau on their cooperation with the committee and each other in attempting to provide better labor and employment services.

FINANCIAL MANAGEMENT AND ADMINISTRATIVE SERVICES

A. General Information

Background

Senate Concurrent Resolution No. 4043 directed a study of the financial management and administrative services of state government including the functions and services of the State Treasurer, Office of Management and Budget, State Tax Commissioner, Bank of North Dakota, State Auditor, Board of University and School Lands, and the Director of Institutions. The resolution states that increased efficiency and possible cost savings may be achieved by the proper distribution and centralization of the various management services and functions provided by these agencies.

Prior Report

The committee reviewed a report prepared in 1942 by the Public Administration Service of Chicago, Illinois, relating to the organization and administration of state government in North Dakota. The report was submitted to the North Dakota Governmental Survey Commisson, which was created by the 1941 Legislative Assembly, and basically recommended a complete streamlining of state government. No action was taken at that time on the report recommendations, although portions of the recommendations have been acted upon in subsequent sessions, such as the creation in 1959 of the Department of Accounts and Purchases (now the Office of Management and Budget) to streamline and consolidate the fiscal administration and purchasing practices of state government.

Review of Information Concerning Agencies Named in the Study Resolution

The seven agencies named in Senate Concurrent Resolution No. 4043 and included in the scope of the committee's study were the State Treasurer, Office of Management and Budget (OMB), State Tax Commissioner, Bank of North Dakota, State Auditor, Board of University and School Lands, and the Director of Institutions. The committee reviewed the following information for each of the seven agencies:

1. Information on the creation, composition, and major duties of each agency.
2. Major statutory duties and responsibilities of each agency, as provided by the North Dakota Century Code.
3. The appropriation to each agency for the 1983-85 biennium, as provided by the 1983 Legislative Assembly.

Each of the seven agencies made presentations to the committee regarding their present duties and responsibilities and were asked to comment on whether or not they are duplicating the services of any other state agency. The agencies were also asked to make recommendations for changes in the organization of state government.

The committee reviewed a Legislative Council report which listed some of the common duties and functions of the seven agencies. Examples of duties or functions that apply to two or more of the seven agencies are collecting state taxes; depositing revenue in the state treasury; recording and payment of state expenditures; checkwriting and signing; and investing state funds.

Based on the information reviewed by the committee, as discussed above, and the testimony provided by the seven agencies named in the study resolution, the committee conducted an in-depth review of several areas relating to the financial management and administrative services of state government. A summary of the committee's study and recommendations in each of these areas is discussed below.

B. Investment and Management of State Funds

Background

One area of interest to the committee was the investment and management of state funds, since several of the agencies included in the study are directly or indirectly involved in the investment of state funds. The committee heard a proposal from the State Land Commissioner which would restructure the State Investment Board as well as the method of investing and management of state funds. The committee also heard presentations by the Bank of North Dakota, OMB, State Treasurer, Workmen's Compensation Bureau, Public Employees Retirement System, Teachers' Fund for Retirement, and the Insurance Department in regard to their recommendations for the investment and management of state funds.

Joint Meeting With Budget "B" Committee

The committee met jointly in December 1983 with the Legislative Council's interim Budget "B" Commit-

tee to hear a presentation by Mr. Stephen R. Myers, State Investment Officer, Sioux Falls, South Dakota, in regard to the investment and management of state funds. The Budget "B" Committee was specifically assigned to study the investment and management of trust funds during the 1983-84 interim.

Conclusions

Since the Budget "B" Committee was specifically assigned to study the investment and management of state funds and because the committee did not want to duplicate the work of that committee, the committee concluded that recommendations in the area of investing state funds should be made by the Budget "B" Committee. Please refer to the interim Budget "B" Committee report for further information.

C. State Auditor

Background

The committee discussed the State Auditor's membership on state boards, as a result of considering the 1942 Governmental Survey Commission's recommendation that the State Auditor no longer serve on any boards for purposes of independence. It was reported that the State Auditor is a member of the State Board of Equalization and the Board of University and School Lands, and is an advisory member of the Public Employees Retirement Board. It was also reported that he does not perform the audits of the State Land Department or the Public Employees Retirement System because of his membership on those boards.

The current membership of the state boards on which the State Auditor serves and a brief explanation of the duties of each board is discussed below.

State Board of Equalization

The State Auditor, Governor, State Treasurer, Commissioner of Agriculture, and State Tax Commissioner constitute the State Board of Equalization. The Governor is chairman of the board and the Tax Commissioner is secretary. The board equalizes the valuation and assessment of property throughout the state and has the power to equalize the assessment of property between assessment districts of the same county and between the different counties.

Board of University and School Lands

The State Auditor, Governor, Secretary of State, Attorney General, and Superintendent of Public Instruction constitute the Board of University and School Lands. The Governor is president, the Secretary of State is vice president, and the Commissioner of University and School Lands is secretary of the board. The board has control of public lands and control of the investment of the permanent funds derived from the sale of public lands.

Public Employees Retirement Board

In addition to serving as an active member of the State Board of Equalization and the Board of University and School Lands, the State Auditor serves as an ex officio, nonvoting, advisory member of the Public Employees Retirement Board. The board consists of five members and is the governing authority of the Public Employees Retirement System. In addition to the five-member board, the State Health Officer and the Commissioner of Banking and Financial Institutions, along with the State Auditor, serve as advisory members of the board.

Testimony

The State Auditor said his office does not audit the Board of University and School Lands and the Public Employees Retirement System because the State Auditor's membership on the Board of University and School Lands and the Public Employees Retirement Board could be viewed as a potential conflict of interest. He said his office performs the audit of the Tax Department since the State Board of Equalization, of which the State Auditor is a member, is an entity separate and distinct from the Tax Department.

The State Auditor said the Public Employees Retirement System and the Board of University and School Lands are audited by private accounting firms. He said his office would need additional staff if it were to begin auditing these two agencies.

In addition to the discussion of the State Auditor's membership on state boards, the committee also discussed possible conflicts of interest of other members of the State Board of Equalization and the Board of University and School Lands. The committee expressed concern that the State Tax Commissioner's membership on the State Board of Equalization may be a conflict of interest.

The State Treasurer testified that he is opposed to the removal of the State Auditor from the State Board of Equalization. He said he would support the removal of the Tax Commissioner from the State Board of Equalization, but that the Tax Commissioner should remain as secretary of the board and provide advisory assistance to the board.

Recommendations

The committee recommends Senate Bill No. 2072 to replace the State Auditor with the State Treasurer on the Board of University and School Lands (contingent on the passage of the resolution discussed in the next paragraph); remove the State Auditor as an advisory member of the Public Employees Retirement Board; and replace the Tax Commissioner with the Secretary of State on the State Board of Equalization. The Tax Commissioner would continue to serve as secretary of the State Board of Equalization. The committee determined that the State Auditor's membership on the State Board of Equalization was not a conflict of interest.

The committee also recommends Senate Concurrent Resolution No. 4006, a constitutional amendment to replace the State Auditor with the State Treasurer as a member of the Board of University and School Lands. The resolution for a constitutional amendment is necessary since the membership of the Land Board is provided in Section 3 of Article IX of the Constitution of North Dakota, as well as in the North Dakota Century Code. If the resolution is approved by the 1985 Legislative Assembly, the proposed amendment would be submitted to the qualified electors of the State of North Dakota at the 1986 primary election.

D. Administrative Placement of Grafton State School and San Haven

Background

In addition to directing the study of financial management and administrative services, Senate Concurrent Resolution No. 4043 also called for the examination of the proper distribution of nonpublic fund functions. In accordance with that directive, the committee heard a presentation by Mr. Lloyd Omdahl,

Chairman of the 1981-83 Ad Hoc Committee on Grafton-San Haven, regarding the administrative placement of the Grafton State School and San Haven. The ad hoc committee recommended that the long-term objective of the state should be to place the Grafton State School and San Haven under the supervision of the Department of Human Services rather than the Director of Institutions.

Some of the points listed by the ad hoc committee in favor of integrating Grafton State School and San Haven in the Department of Human Services were as follows:

1. Professional accountability would be enhanced since administrators in the Human Services Department would be professionally more conversant with the professional and programmatic problems at Grafton-San Haven.
2. The deinstitutionalization program will require close relationship between the regional human service centers expected to develop the community support programs and the Grafton institution sending clients into those programs. This relationship can be monitored most easily if all facets are under the control of one department.
3. Expenditures for the Grafton-San Haven facet of human services in North Dakota can be better prioritized in the best interests of all human service programs when the prioritizing is done in the department where most human service programs are located.
4. Legislative review of total mental health programming will be facilitated by having one agency presenting the whole picture.
5. Human services has a wide range of services that can be coordinated and applied to assist parents and regional offices in meeting needs of clients.
6. Responsibility for all services for the mentally retarded vested in a single agency avoids the hazards of jurisdictional conflicts.

Testimony

The Director of Institutions testified that, after consultation with the Governor, his recommendation is the administrative placement of Grafton State School and San Haven should remain the same for the following reasons:

1. The Department of Human Services has just been reorganized and because of that it would not be appropriate at this time to also have that department assume the administrative control of the Grafton State School and San Haven.
2. The state of North Dakota is presently bringing its mentally retarded facilities into compliance with federal guidelines. Administrative control changes at this time would not be in the best interests of the complicated and lengthy process in which the state is presently involved.

The Department of Human Services explained the implementation currently taking place as a result of a number of governmental entities being reorganized into the Department of Human Services, which was newly created on January 1, 1982. The department did not express resistance to the proposal of transferring administrative control of the Grafton State School and San Haven, but said the state is now involved in a complicated and lengthy process of bringing its mentally retarded facilities into compliance with federal guidelines. The department said that any changes in administrative control should not take place until the court order is lifted and suggested an effective date for any proposed legislation of July 1, 1989.

Recommendations

The committee recommends House Bill No.1062 to transfer administrative control of the Grafton State School and San Haven from the Director of Institutions to the Department of Human Services, effective July 1, 1989.

E. State Treasurer

Background

The committee reviewed House Concurrent Resolution No. 3011, which proposes an amendment to the Constitution of North Dakota. The amendment removes the State Treasurer as an elected constitutional officer effective January 1, 1989. The constitutional amendment is to be submitted to the qualified electors of the state at the general election to be held in November 1984. The committee discussed House Concurrent Resolution No. 3011 because of its relationship to Senate Concurrent Resolution No. 4043, which directed a study of the functions and duties of certain agencies, including those of the State Treasurer.

The intent given in House Concurrent Resolution No. 3011 states that the duties now performed by the State Treasurer would be performed by other agencies as provided by law. The chairman said a responsibility of this committee is to determine where to transfer the present functions of the State Treasurer, if the constitutional amendment eliminating the State Treasurer is approved at the 1984 general election.

Review of the State Treasurer's Duties and Responsibilities

At various meetings throughout the course of the interim, the committee reviewed the current duties and responsibilities of the State Treasurer. The Legislative Council staff prepared a report which included a listing of all current statutory duties of the State Treasurer and the agencies that could assume those duties if the constitutional amendment is approved. It was reported that the State Treasurer was referred to in approximately 380 sections of the North Dakota Century Code, and that a large number of those sectons were general references to the State Treasurer in regard to the deposit of funds or the payment of warrants.

It was also reported that the Office of Management and Budget (OMB) would assume most of the duties simply because it would be the logical agency to handle the recording of deposits, payment of warrants, and the distribution of certain funds to political subdivisions.

The following is a list of some of the major statutory duties and responsibilities of the State Treasurer, reviewed by the committee for the purpose of determining which other state agencies could assume those duties:

The State Treasurer distributes 75 percent of aeronautics distribution fund to the county treasurers of aircraft registrant's county residence.

The State Treasurer distributes 50 percent of proceeds from aerial spraying licenses to county treasurers and remaining 50 percent to the state general fund.

The State Treasurer acts as the state's wholesale liquor control agent.

The State Treasurer and director of the Office of Management and Budget may execute and issue evidences of indebtedness on the general fund.

The State Treasurer is on the board of trustees to manage the teachers' retirement fund.

The State Treasurer is a member of the State Canvassing Board.

The State Treasurer is a member of the State Laboratories Commission.

The State Treasurer is a member of the State Investment Board.

Moneys in the veterans postwar trust fund are to be invested by the State Treasurer.

Apportionment of moneys paid into the state treasury, any part of which is required by law to be paid to counties or political subdivisions, is to be made by the Office of Management and Budget and the State Treasurer.

Moneys in the highway tax distribution fund are allocated and transferred monthly by the State Treasurer.

The State Treasurer allocates and distributes all moneys in the township highway aid fund quarterly.

The State Treasurer allocates and transfers, by legislative appropriations, the state revenue sharing funds quarterly.

The State Treasurer is an ex officio member of the State Historical Board.

Sales and use taxes collected by the Tax Commissioner from home rule cities are deposited with the State Treasurer. The State Treasurer quarterly allocates the funds to the city auditors.

The State Treasurer is a member of the State Board of Equalization.

The State Treasurer makes the annual allocation of the tax on electrical generating plants.

Tobacco products taxes collected by the Tax Commissioner are deposited with the State Treasurer. Transfer and allocation of taxes are made by the State Treasurer.

Estate taxes collected by the Tax Commissioner are paid to the State Treasurer monthly and allocated by the State Treasurer.

Moneys collected from the oil and gas gross production tax by the Tax Commissioner are paid to the State Treasurer who apportions the funds quarterly.

Moneys collected from the oil extraction tax by the Tax Commissioner are paid to the State Treasurer and apportioned quarterly.

All moneys collected by the Tax Commissioner from the privilege tax on coal conversion facilities are deposited with the State Treasurer who allocates the money accordingly.

Moneys collected by the Tax Commissioner from the coal severance tax are paid to the State Treasurer and credited to the coal development fund. Moneys deposited in the coal development fund are apportioned quarterly by the State Treasurer.

Testimony

Among the agencies testifying in regard to the possible allocation of the State Treasurer's duties were the State Treasurer, OMB, Tax Department, Bank of North Dakota, and Attorney General.

The State Treasurer said if his office were eliminated many of the duties of the office would most logically be transferred to OMB. He noted that one exception would be the collection of the tax on liquor and beer wholesalers, which he said is a duty that could probably be best handled by the Attorney General's office. The State Treasurer said his office currently has 10 filled positions and if the office were eliminated it would be necessary to transfer all 10 positions, with the possible exception of the State Treasurer and his secretary, to the agencies that would be handling the Treasurer's duties.

The Office of Management and Budget said the operation and maintenance of the state's accounting system is the primary vehicle through which OMB activities interrelate with the State Treasurer. The Office of Management and Budget discussed a number of the State Treasurer's current statutory duties and OMB's relationship with those duties. The Office of Management and Budget said that many of the custodial duties performed by the State Treasurer's office are closely entwined with operations of the state's central accounting system maintained by OMB, and that OMB could assume many of these duties if the constitutional amendment is approved. The Office of Management and Budget said it is important to note that if such duties were assigned to OMB it would be necessary to continue proper internal control over the receipt and disbursement of state funds, which would mean that resources for handling these transactions would be necessary within OMB.

The Office of Management and Budget said the State Treasurer maintains systems for the allocation and distribution of various funds to political subdivisions, and that since OMB is the primary agency responsible for disbursing state funds and maintaining a record of these disbursements, it should be considered as the office to perform these duties. The Office of Management and Budget said this fuction would also require resources currently existing in the State Treasurer's office.

The Office of Management and Budget said that even though certain resources would need to be transferred to its office to continue certain custodial duties of the State Treasurer if that office were eliminated, there are efficiencies which would take place since OMB is responsible for much of the information that is used in recording and analyzing state revenues and expenditures. The Office of Management and Budget said the consolidation of these custodial duties within OMB would enhance the controllership function of the department as well as the budget preparation process.

The Office of Management and Budget said that although it is the logical agency to provide for disbursements and the recording of revenues it is not an enforcement agency that should be responsible for collections. The Office of Management and Budget said the sections of law that refer to remitting funds should be reviewed, and if the State Treasurer is the first receiver of the funds, an agency other than OMB should assume the duty of collecting the funds.

The Tax Department said the duties, listed in the report being reviewed by the committee, that could be

assumed by their department are all revenue functions that properly fall under the supervision of a revenue agency such as the Tax Department. The Tax Commissioner said the taxing of beer and liquor wholesalers is a duty that should be assumed by the Tax Department, and not the Attorney General as suggested by the State Treasurer.

The Bank of North Dakota testified that it would probably need to hire some additional clerical personnel to take over some of the duties of the State Treasurer. The Bank provided assistance to the committee in regard to which agencies should assume the State Treasurer's duties relating to the handling of bonds.

The Attorney General said it would be preferable for the wholesale liquor control duties of the State Treasurer to be performed by the Attorney General's office in conjunction with its retail liquor control duties, rather than have the wholesale liquor control duties transferred to the Tax Department. He said one full-time person and funds for computer time and mailings would be necessary for his office to perform the wholesale liquor control duties.

Recommendations

The committee had recommended a bill transferring on January 1, 1989, the statutory duties of the State Treasurer to other state agencies, subject to the approval of the constitutional amendment at the general election to eliminate the State Treasurer as a constitutional officer. Since the constitutional amendment was not approved at the November 6, 1984, general election, the bill is no longer recommended by the committee.

The bill provided for a majority of the State Treasurer's duties, including those duties relating to recording deposits, the payment of warrants, and the distribution of funds to political subdivisions, to be transferred to the Office of Management and Budget.

The bill also provided for the general duties of the State Treasurer relating to the handling of bonds to be transferred to the Bank of North Dakota, and for the wholesale liquor control duties to be transferred to the office of the Attorney General.

The committee did not take a position which approved or disapproved the elimination of the office of State Treasurer by constitutional amendment.

Estimated Fiscal Impact

Since the bill recommended by the committee provided for a majority of the duties to be assumed by the Office of Management and Budget, Bank of North Dakota, and Attorney General's office, the committee requested these agencies to estimate the fiscal impact and manpower needs of their agencies if they assume various duties of the State Treasurer. It should be noted that these amounts do not reflect the additional costs that may have been incurred by agencies other than the Office of Management and Budget, Bank of North Dakota, and Attorney General, which would have assumed some of the minor duties of the State Treasurer. The following summarizes the responses of the three agencies to the committee's request:

Agency	Estimated Annual Cost
Office of Management and Budget (4 FTE positions and operating expenses)	$115,000-130,000
Attorney General (1 FTE position and operating expenses)	$19,157
Bank of North Dakota (2 FTE positions and operating expenses)	$40,708
Total Estimated Annual Cost — All Three Agencies	$174,865-189,865
Total Estimated Biennial Cost — All Three Agencies	$349,730-379,730

For the 1983-85 biennium, the office of the State Treasurer has authorization for 10 FTE positions including the State Treasurer and is appropriated $552,085 from the general fund.

INDUSTRY, BUSINESS AND LABOR COMMITTEE

The Industry, Business and Labor Committee was assigned three study resolutions. Senate Concurrent Resolution No. 4056 directed a study of the taxes, fees, and charges imposed on insurance companies, the effect of taxes, fees, and charges on the costs of providing or receiving health care insurance coverage, the effect of overutilization of health care insurance, and potential methods of cost containment for health care coverage. House Concurrent Resolution No. 3093 directed a study of the feasibility of establishing a self-insurance health benefits program for state employees. House Concurrent Resolution No. 3063 directed a study of the impacts and problems associated with business closings. In response to concerns regarding the then recently passed "Buy Minnesota" law, the Legislative Council chairman authorized the committee to expand its interim study responsibilities to include a review of the North Dakota bid preference laws.

Committee members were Senators David E. Nething (Chairman), Jan Dykshoorn, Donald J. Kilander, Jim Kusler, Herschel Lashkowitz, Chester Reiten, and Art Todd; and Representatives Judy L. DeMers, Paul L. DuBord, James Gerl, Brynhild Haugland, S. F. Hoffner, Rodney A. Larson, Joe Peltier, Joseph R. Whalen, and Clark Williams.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

HEALTH CARE STUDIES

Senate Concurrent Resolution No. 4056 and House Concurrent Resolution No. 3093 both reflect legislative concern regarding the rising costs associated with health care.

Health Care Cost Containment

The Legislative Council approved the appointment of a subcommittee structure including nonlegislator members as part of the committee's health care cost containment study. The chairman of the committee appointed three subcommittees and assigned them the general study areas of government regulations, health care innovations, and medical malpractice.

I. Government Regulations Subcommittee

The Government Regulations Subcommittee investigated the effect of government regulations on increasing health care costs. Subcommittee members were Representatives S. F. Hoffner (Chairman), Judy L. DeMers, Brynhild Haugland, and Rodney A. Larson; Senator Jim Kusler; and Citizen Members Robert L. Boxrud, Gary D. Johnson, Marlin J. E. Johnson, Fred G. Larson, and Richard A. Tschider. The subcommittee held four meetings at which it received oral and written testimony concerning its area of study. Based upon its deliberations, the subcommittee recommended four bill drafts to the committee.

A. Background

In 1970 national health expenditures totaled $75 billion or 7.5 percent of the gross national product (GNP). By 1982 expenditures had risen to $322 billion and 10.5 percent of the GNP. This meant that the nation's health expenses more than quadrupled in 12 years, an increase well beyond the rate of inflation and growth of the general economy. In 1984 Americans will spend approximately $1 billion per day on health care. In 1966 personal health care expenditures in the United States and North Dakota were slightly less than $200 per person. By 1982 they were estimated to be $1,215 per person in the United States and about $1,258 per person in North Dakota. If this trend has continued, annual health care expenditures in North Dakota are now costing between $1,500 and $1,600 per person.

B. Previous Studies

Among the materials reviewed by the subcommittee concerning government regulations and their effect on health care costs was the North Dakota State Health Plan 1982-1985. This document was prepared by the North Dakota Statewide Health Coordinating Council (SHCC), a group of health care consumers and providers. The State Health Plan is a comprehensive statement for health policy for North Dakota which sets forth desired improvements in the health status of North Dakotans and actions required to achieve these improvements. The State Health Plan is a comprehensive overview of health and health cost problems. One portion of the State Health Plan discusses in detail the rise in North Dakota and national health care costs. Among the areas of concern discussed by the plan are the following facts:

- Nationwide health expenditures have been continually and substantially increasing.
- The rise in nationwide health expenditures has been exceeding the growth of the general economy.
- Though certainly not the only contributing factor in rising health expenditures, hospital care is the leading health service in accounting for health expenses.
- Over the decade of the 1970's, medical and health service income has grown at a faster rate in North Dakota than it has nationwide.
- From 1976 through 1980, the amount of total personal income claimed by medical and health services has been higher in North Dakota than it has nationwide and throughout most of the 1970's this amount has grown at a faster rate in North Dakota than it has nationwide.
- From 1975 to 1980, both the cost of community hospitals per capita and the share of per capita income claimed by hospital costs have increased faster in North Dakota than they have nationwide. By 1980 these costs were ahead of the national averages.

The plan states that the common mechanistic view of personal health care has inhibited improvements in health and led to an overemphasis in public policy on the diagnosis and treatment of illness. One of the plan's conclusions is that the most substantial and cost effective improvements in the population's health can be made through changes in preventive health inputs such as lifestyle and environment. However, these improvements may take decades to manifest themselves as

improved health and a decreased need for medical care.

In analyzing state legislation and appropriations for health care in North Dakota, the plan says that given the three goals of improving the population's health, increasing the population's access to health promotion, prevention, and primary care services, and containing the cost of health care, the question of determining the best strategies for achieving these goals becomes crucial, and an appropriate balance must be struck between services that treat or cure illness, and services that promote health and prevent illness. The plan also states that a balanced approach must be taken which fosters competition and streamlines health care regulation to restrain the rapid increase in costs and assure the availability of the resources needed to increase access to health promotion, disease prevention, primary care, and alternatives to institutionalization.

The subcommittee reviewed the activities and conclusions of the 1979-80 Legislative Council's interim Health Care Committee and considered materials describing recent health care cost containment legislaton enacted in other states as well as proposed legislation relating to the major health issues for the states.

C. Subcommittee Investigation

After reviewing a wide range of possible areas of investigation and legislative action, the subcommittee decided to focus its attention on the following issues:

- The implementation and potential impact of the Medicare diagnostic-related group (DRG) based prospective pricing system, and alternatives available for implementation by the state.
- Duplicate coverage and payment of insurance premiums by the state for members of the same family who work for the state.
- Health maintenance organizations' required annual reports to the Commissioner of Insurance on a fiscal year basis instead of the presently required calendar year basis.
- The certificate of need law.

1. Medicare Prospective Pricing System: DRGs and State Alternatives

Background. The subcommittee received extensive oral and written testimony concerning the prospective pricing system now instituted for most hospitals participating in Medicare. Testimony was received on the nature of the system, its strengths and weaknesses, its potential effect on the North Dakota health care system, and possible alternatives for state action.

The "DRG system" is a common name for the type of reimbursement system being instituted by the federal government for the Medicare program. Its full name is the diagnostic-related group based prospective pricing system which sets rates on a "per case" or per diagnosis basis. It is a prospective pricing system. The amount of reimbursement is set before, but paid after, health care services are provided. The Medicare DRG system presently applies only to hospital inpatient services. It does not apply to capital costs; however, the possibility of including this and other elements is under study by the federal government.

The DRG system applies only to Medicare. There are two basic programs under Medicare:

- Hospital insurance for inpatient hospital care and other related care of those 65 years of age and over and of the long-term disabled.
- Supplementary medical insurance for physicians' services, outpatient hospital services, and other medical expenses of those 65 years of age and over and of the long-term disabled.

The hospital insurance program is financed primarily by payroll taxes, with the taxes paid by current workers used to pay benefits to current beneficiaries. However, the hospital insurance portion of Medicare maintains a trust fund (the hospital insurance trust fund) that provides a small reserve against fluctuations. It is projected that the hospital insurance trust fund for Medicare will be insolvent by 1990 (or earlier). The DRG system was implemented by the federal government to reduce the growth of federal expenditures from the hospital insurance program, and avoid the impending insolvency. Although a general reduction of health care costs is consistent with the intent of the federal implementation of the DRG system, the priority for the DRG system is clearly the protection of the hospital insurance trust fund by limiting federal expenditures. In the hospitals of those states which do not have a prospective reimbursement system for the non-Medicare segments of the health care economy, the fixed-rate prospective DRG system will operate side-by-side with the old cost-based retrospective system.

In the past, attempts have been made at state and federal levels to limit expenditures for health care by placing limits on how much government will pay for health care services given to people on Medicare or Medicaid. As a result of these limits, hospitals and doctors have received less than their normal charge for treating patients under these government programs. To make up this shortfall the remaining patients have been charged more. This is called "cost shifting." The greater the discrepancy becomes between the normal charge and the government payment for services, the greater the cost shifting. The subcommittee was told that if the DRG system succeeds in cutting federal expenditures by tightening the limits on federal payments for services to Medicare patients, it will mean increased health care costs for any government or private-pay patients who are available for and vulnerable to cost shifting.

A similar circumstance existed in New Jersey when that state began ratesetting in 1972. The state program covered only Blue Cross and Medicaid, while the Medicare program and the remaining private payors remained on a cost-based retrospective system. The existence of a ratesetting-based prospective system along with the cost-based retropsective system caused an increase in cost shifting. This cost shifting created severe problems for those New Jersey hospitals with more Blue Cross and Medicaid

patients, and fewer other patients to whom the cost could be shifted. In New Jersey these were the inner city hospitals. The protection of these hospitals was one reason New Jersey eventually implemented an all-payor system. In North Dakota the cost shift resulting from placing prospective limits on only the Medicare segment of the health care economy will have a similar effect, and impact most heavily upon those hospitals with comparatively more patients covered by the prospective limits. These are generally North Dakota's rural hospitals, because a greater portion of their patients are on Medicare. Added to this negative impact on rural hospitals in North Dakota are the existing handicaps of lower rates of utilization, and lower reimbursement rates under the DRG system.

Another possible effect of the implementation of the Medicare DRG system which was reported to the subcommittee is the possibility that the patient load and severity of patient need may shift dramatically for doctors and nursing homes as hospitals seek to economize to meet the DRG requirements.

The DRG system will also affect how states meet the cost of uncompensated care (the cost of providing charity care, and bad debt owed by patients to health care providers). In the past, hospitals passed along the costs of uncompensated care mainly to private-pay patients. The implementation of the DRG system may increase this cross-subsidization of uncompensated care.

Representatives of the State Department of Health gave extensive and in-depth testimony concerning the diagnostic-related group system and alternative solutions to the health care cost containment problem. The subcommittee was provided with information from two recent publications of the State Department of Health entitled "North Dakota Health Care Costs, Issues, and Alternatives" and "Summary of Health Care Cost Containment Approaches: United States." These reports discuss symptoms of cost increases, causes of these increases, and alternative solutions, emphasizing prospective reimbursement systems.

It was pointed out that there are many differences in the existing state programs utilizing prospective reimbursement systems for rate-setting. Areas of differences include the nature, organization, and staffing of the administrating agency; the type of positive and negative financial incentives included in the program; the mandatory or voluntary nature of the program; the scope of the program (all-payor, single-payor, or part-payor); and the manner in which the system determines equitable rates in light of the existing circumstances. Illustrations of the different kinds of systems were pointed out among the existing prospective reimbursement systems in operation in the United States.

The Health Care Cost Containment Section of the National Conference of State Legislatures presented a technical assistance program to the subcommittee concerning the implementation and potential impact of the diagnostic-related group based prospective pricing system and alternatives available for implementation by the state.

It was suggested to the subcommittee that the present health care system lacks fundamental characteristics which must be present and functioning in order to have a free market economy, including financial liability, consumer knowledge, economic competition, and ease of marketplace entry and exit. It was suggested that many of the past attempts at finding solutions to health care cost containment failed because of their incremental and piecemeal nature. The implementation of some form of prospective reimbursement system (DRG, capitation, etc.) was seen by many witnesses as a means of introducing free market economic incentives into the health care system. Testimony suggested that this comprehensive change in the underlying structure of the health care economy, in combination with the piecemeal changes, would result in a more successful attack on spiraling health care costs.

A representative of Blue Cross of North Dakota described to the subcommittee the operation and results of a study conducted by Blue Cross on a capitation system. A capitated health care reimbursement system sets rates prospectively, and is based on a "per person" unit of measurement rather than the "per diagnosis" unit used in the DRG system. One of the major features of the capitation program is a fixed target sum of dollars set for the hospitals prospectively, instead of after the service was rendered. These target sums were arrived at by analyzing particular age groups and then setting given rates for people in the age groups. The study ran from June 1982 to December 1983, involved three communities and six hospitals, and included participation by approximately 50,000 people.

Some of the results of the capitation program were the development of a state of the art management information system, verification of the underestimated influence of consumer demand on rising health care costs, and the conclusion by the Blue Cross Capitation Steering Committee that capitation will be the health care financing system of the future. The subcommittee was told that among the recommendations of the Capitation Steering Committee adopted by the Blue Cross board of directors was a recommendation to develop and adopt as soon as feasible the diagnostic-related group based reimbursement system as the methodology for hospital reimbursement. It was explained that although the capitation program was very successful, it would have been difficult for Blue Cross, which pays 35 to 40 percent of the dollars which hospitals receive, to implement a capitation system while Medicare, which pays 40 percent of the dollars which hospitals receive, is operating on a DRG-based system. It was suggested to the subcommittee that the DRG system is a transitional system which will lead to a capitation program because the DRG system discourages longer lengths of stay but encourages admissions, while the capitation program discourages both increased admissions and longer lengths of stay. It was emphasized

that patients, hospitals, doctors, payors, and all interested parties should be involved in the development of any large-scale approach to dealing with the health care cost problem.

Options. To meet the projected impact of the DRG system, it was suggested that all North Dakota hospitals, and rural hospitals in particular, will have to adjust their style of operations. Hospitals may be forced to specialize, develop extensive data systems, analyze existing programs to determine economic viability and increase the economic scrutiny of the activities of physicians working in the hospital. It was suggested that rural hospitals should provide primary care, with referral for more intensive care to hospitals in nearby urban areas if needed. The committee was told that in light of the DRG system's projected impact on rural hospitals, this networking between rural hospitals and urban medical centers may have to be encouraged and utilized more extensively.

The options open to the Legislative Assembly are more sweeping than those open to the hospitals of North Dakota. The first option is to take no state action. This would entail the continued implementation of the DRG system without a coordinated monitoring of the impact which the system is having, and without the study and preparation of possible alternatives to meet problems that may develop under the DRG system. The second option is to take the necessary steps to analyze effectively the impact of the DRG system and prepare appropriate responses to problems as they are identified. Within the second alternative is a wide range of actions that may be taken by the state. A few of the possible actions that could be taken are:

- Establish or designate some body or agency to monitor the impact of the DRG system and report periodically to the Legislative Assembly or an appropriate interim committee.
- Establish a task force (such as Nebraska's) to analyze the different reimbursement systems and present detailed recommendations for a state alternative to the DRG system.
- Direct an existing government agency to develop legislation proposing a designated type of state system.

Any system developed under one of these actions could either include or exclude Medicare. If the system does not include Medicare, difficulties might be encountered if the system is not a DRG-based prospective system. An alternative state system that included Medicare could be tailored to suit the particular needs and resources of North Dakota. If the state system is designed to included Medicare, the state must obtain a Medicare waiver from the federal government. If 12 requirements listed in the Social Security Amendments of 1983 are met, the waiver must be granted. The most important requirements are that the system must apply to all nonfederal acute care hospitals, apply to at least 75 percent of all inpatient revenues, provide assurances that payors are treated equitably, guarantee it will not result in greater Medicare expenditures over a three-year period, be operated directly by the state or by an entity designated by the state, and be prospective.

A system designed for North Dakota could involve any of the following:

- Include or exclude Medicare reimbursement.
- Voluntary provider or facility participation and compliance.
- Mandatory provider or facility participation and voluntary compliance (Minnesota).
- Voluntary provider or facility participation and mandatory compliance (Montana).
- Mandatory provider or facility participation and compliance (New Jersey).
- Part-payor coverage (Iowa — Blue Cross) (Kansas — Blue Cross and Medicaid).
- All-payor (New Jersey).

Subcommittee Conclusion. The subcommittee made no recommendation to the committee concerning the monitoring of the implementation of the Medicare DRG system or the possibility of North Dakota seeking a waiver for implementation of its own system.

2. **Duplicate Payment of Health Insurance Premiums by the State**

Concern was expressed that the state may be paying premiums for overlapping health insurance coverage of state employees who belong to the same family. This could occur if one spouse was covered by a "family" policy which includes the other spouse, while the other spouse is also covered by a "single" policy. The subcommittee was informed that if 100 families are involved in such duplicate coverage, a remedial program could return one-half of the savings to the employees and still save the state up to $250,000.

The subcommittee received testimony from the executive director of the Public Employees Retirement System to the effect that it would be very difficult to ascertain how many instances of duplicate coverage exist in the state employees' insurance plan. The subcommittee was informed that there is no cross-reference made to check for duplicate coverage unless a claim is filed, and this is only done to prevent duplicate recovery. A number of proposals were considered for discovering the extent of any duplicate coverage, or instituting an ongoing monitoring of insurance for state emloyees. It was suggested that because the state is partially self-insured, having an "administrative services only" contract with Blue Cross whereby the state holds the money until claims are paid, the duplication in payment of premiums is not a major problem as long as duplicate recovery is prevented.

Subcommittee Conclusion. The subcommittee made no recommendation regarding duplication in payment for state employee health insurance but suggested that further investigation might be appropriate.

3. **Health Maintenance Organization Reporting Requirements**

The subcommittee investigated why the Commissioner of Insurance does not allow the use of fiscal year reports by health maintenance organ-

izations (HMOs) for the annual reporting requirement. The subcommittee received testimony concerning an amendment to House Bill No. 1044, introduced in the 1983 Legislative Assembly, which would have modified Section 26.1-18-18 to allow health maintenance organizations to use fiscal year reports to satisfy their requirement of an annual report to the commissioner. It was stated that the calendar year requirement presently imposed on health maintenance organizations is costly to health maintenance organizations which are set up on a fiscal year not coinciding with the calendar year. The subcommittee was informed that the HMO in Hettinger was set up on its existing fiscal year because of practical considerations and federal requirements.

The subcommittee also received testimony from a representative of the Commissioner of Insurance who asserted that nationally and in North Dakota these reports are made on a calendar year basis, and that over 1,200 other companies that must make the same report as is required of the Hettinger HMO all report on a calendar year basis. The representative said one exception would not be a major problem for the department, but in making the exception the department would be opening the door to many more exceptions which would eventually create serious problems. Testimony was also received that HMOs in other states are given exceptions from the calendar year rule and are allowed to report on a fiscal year basis.

Subcommittee Recommendation. The subcommittee concluded that this law was impeding the operations of health care providers, and was unduly burdensome resulting in increased costs to the institutions and to the patients they serve. The subcommittee recommended a bill draft to provide for the amendment of North Dakota Century Code (NDCC) Section 26.1-18-18 to require a fiscal year report, instead of a calendar year report, by health maintenance organizations. (The committee accepted the subcommittee's recommendation.)

4. **Certificate of Need Law**

The state certificate of need (CON) law is designed to prevent unneeded hospital expenditures through a planning and review process. In North Dakota, the State Health Council makes the final decision on granting certificates of need. Certificate of need laws are mandated as a condition for receipt of some federal funds.

The subcommittee received testimony from the administrator of the certificate of need program, in which it was stated that because government accounts for 40 to 45 percent of health care reimbursement, the present health care system is a mixture of both private and public involvement.

The subcommittee was informed that government regulation was designed as a partial substitute for free market forces (supply and demand) not present in the health care economy. Certificate of need review was instituted as a forum for rational allocaton of resources and cooperative establishment of appropriate levels of capital expenditure. The importance of capital expenditures and their relation to health care costs can be illustrated by the fact that according to national figures gathered over the last 20 years, for every $1 spent in capital expenditures, from 22 to 30 cents in annual operational costs have been injected into the system.

It was suggested to the subcommittee that the free market serves as the final tool of consumers, but health care demand was greatly increased by the creation of Medicare and Medicaid, so the problem must be attacked at the source and not through a patchwork approach. The elimination of the certificate of need review was suggested, based on the belief that the review raises artificial barriers and actually increases health care costs in the long run. It was suggested that more important long-term problems and solutions revolve around factors which have been built into the health care system, such as the cost-plus based reimbursement system. The subcommittee was also told that free market incentives could reduce health care costs if the health care system were indeed a free market system.

It was reported to the subcommittee that according to national figures, prior to 1979 an average of approximately 10 percent of certificate of need applications were turned down, and after 1979 rejections of applications have run consistently around 20 percent. National figures show the costs of administration for the certificate of need system were approximately $50 million; however, approximately $4.4 billion in applications for capital expenditures were denied, saving the consumer not only that figure, but also the operating costs that would have resulted from those capital expenditures. Testimony also indicated that in the rush to acquire state of the art technology, equipment is often purchased which is made obsolete in a short time by more advanced and less costly versions of the same technology.

The subcommittee received testimony that although the North Dakota certificate of need program has successfully rejected only one application in the last three years, the denial ratio is not the total picture. It was asserted that the existence of certificate of need review serves to discourage inappropriate applications and that the process of review weeds out inappropriate portions of any application before it reaches the State Health Council.

The subcommittee considered bill drafts relating to three areas of the certificate of need program — State Health Council membership, thresholds, and exemption for physicians and dentists.

a. **State Health Council Membership**

The subcommittee considered a proposal to modify the membership of the State Health Council which, among its other duties, is the final decisionmaking body on certificate of need applications. The proposal provided for retaining the eight existing health care provider representatives, and increasing the number of consumer representatives from three to seven, with three of the added consumer members to represent the business community, the agriculture community, and organized labor, while the fourth new con-

sumer member was to be chosen at large. This proposal was a compromise to a previous proposal to decrease the health care provider representatives from eight to six and increase the consumer representatives from three to five.

Initial concerns about the elimination of two health care provider representatives rested on the assertion that doctors and hospitals have more at stake, financially and otherwise, in Health Council decisions, as well as on the possibility of weakening the expertise of the Health Council. This source of original opposition supported the compromise proposal as a means of retaining the required expertise, while increasing the consumer representation.

The subcommittee also received testimony that questioned whether increasing the number of consumer representatives would have much effect because consumer representatives routinely follow the lead of provider representatives. However, it was suggested to the subcommittee that while this might have been true in the past, it is not true any longer, because consumers have become much more sophisticated in their knowledge and independent in their thinking concerning health care and health care costs. Considering the large expenditures that are at stake and their effect on health care costs, it was asserted that increasing the access of consumers to health care decisions affecting these costs is an important goal of the Legislative Assembly.

The subcommittee received testimony from representatives of the business and labor communities who strongly supported increasing the representation of consumers, including some testimony suggesting that a consumer majority would be more appropriate for the Health Council. One witness reported to the subcommittee that the company she represented had medical claims that amounted to over $2 million every year, with cost increases of 20 percent every year for the last three years with no increase in the range of benefits provided. Testimony was also given asserting that North Dakota need not be in the forefront of providing the newest in experimental high technology medical equipment, especially if such equipment and care is readily available in Minnesota.

Subcommittee Recommendation. The subcommittee recommended a bill draft to the committee that retained the eight existing health care provider representatives, increased the number of consumer representatives from three to seven, and provided that three of the consumer members represent business, labor, and agriculture. (The committee accepted the subcommittee's recommendation with some modifications.)

b. **Thresholds**

The second area of CON law considered by the subcommittee was the threshold dollar amount at which certificate of need review becomes applicable. The present thresholds are determined by reference to federal regulations containing an indexing mechanism, and are presently $695,285 for capital expenditure, $289,702 for expenditure minimum, and $400,000 for major medical equipment (subject to further indexing). The subcommittee considered a proposal to amend these thresholds by eliminating the indexing and setting fixed thresholds of $750,000 for capital expenditure, $300,000 for expenditure minimum, and $500,000 for major medical equipment. The subcommittee was made aware of a possible constitutional problem with the existing reference to federal regulations which were changed subsequent to the effective date of the statute. The problem exists because of the opinion by the North Dakota Supreme Court in State v. Julson, 202 N.W. 2d 145 (1972), that a statute adopting by reference laws and regulations of the federal government in existence at the time of enactment of the adopting North Dakota statute is not an unlawful delegation of legislative power where the adopting statute does not attempt to adopt future laws, rules, or regulations of the federal government.

One reason given for supporting fixed thresholds and the elimination of reference to federal law was the possible amendment of the federal certificate of need thresholds to amounts which might be appropriate for large urban situations but not to North Dakota (for example, $5 million thresholds). There was initial opposition to the proposal to delete the indexing mechanism because the fixed thresholds would only be subject to biennial review by the Legislative Assembly. It was suggested that the indexing language used by the federal regulations be incorporated into the North Dakota certificate of need law. A bill draft incorporating such indexing language was considered by the subcommittee, but was rejected in favor of a bill draft with fixed thresholds in part because the original opposition changed to support of fixed compromise thresholds which increased the ease of compliance and administration.

Subcommittee Recommendation. The subcommittee recommended a bill draft to the committee to delete the current reference to federal law; set fixed thresholds of $750,000 for capital expenditure, $300,000 for expenditure minimum, and $500,000 for major medical equipment; delete certain vague and confusing language which did not add substantively to the legal effect of the certificate of need law; and delete language made superfluous because the existing thresholds would not be reached by any of the activities listed in the deleted language. (With some modification the committee accepted the subcommittee's recommendation.)

c. **Elimination of Exemption for Physicians and Dentists**

The third area of CON law considered by the subcommittee was language which exempts private physicians or dentists, whether for individual or group practice, from application of the certificate of need law under circumstances that would otherwise require certificate of need review.

The subcommittee received testimony that the language providing exemptions, which is contained in the definitions of "(a)mbulatory surgical facility," "(h)ealth care facility," and "(p)erson," is in conflict with language contained in the scope of coverage section which clearly shows an intention for the law to apply certificate of need review to all actions "by or on behalf of a health care facility." The subcommittee was informed that because of the specific exclusion of "the offices of private physicians or dentists, whether for individual or group practice" the certificate of need law is circumvented by having someone exempted from review purchase the equipment and locate the equipment adjacent to and for the use and benefit of a hospital. It was stated that the elimination of this exemption was not intended to make the certificate of need law applicable to all physicians and dentists, but only to physicians and dentists when they act for or on behalf of a health care facility. The subcommittee was told that under the scope of practice section only purchases by an institution defined as a "health care facility" are reviewable, and a facility is only a "health care facility" if it is certified by the Department of Health or Medicaid/Medicare reimbursement or if it is licensed by the department.

The subcommittee received testimony that questioned whether there were situations where the absence of review had a negative effect on the health care system. In response to this question, the subcommittee was told that the installation of some equipment should have been reviewed, but because of the exclusion was not, preventing scrutiny by the government or people who will be paying for the equipment. The subcommittee heard that each new level of medical technology is exponentially more expensive than the last, and that while the purpose of certificate of need review is not to deny all new services, it is designed to discourage inappropriate, or unjustified, expenditures on experimental or duplicative technology.

The subcommittee also received testimony that the exclusionary language was placed in the certificate of need law to exclude intentionally physicians and dentists from applicaton of the law. The suggested reason for this exclusion was that the practice of medicine is a relatively free enterprise system, and application of the certificate of need law would only inject a burdensome government function changing the intent and character of the law. The subcommittee was told that more regulations only lead to more regulations and more problems, and if a clinic or doctor is willing to take the risk they should be able to make additions without interference. This assertion led to testimony that suggested that clinics are only marginally at risk because if the new equipment does not have enough patient use to pay its own way, the clinic will charge more for the use of that equipment and other services to make up the difference.

While it was suggested to the subcommittee that open review of applications for acquisition of new and experimental technology such as the nuclear magnetic resonance scanners would benefit the consumers of health care by prohibiting inappropriate and untimely expenditures, it was also stated that waiting for better equipment will mean waiting until many people have died, and the primary concern is for quality of care.

The subcommittee was informed that four applications for magnetic resonance imaging equipment were pending before the certificate of need program. Two applications came from hospitals and two came from investment groups representing clinics. The position was taken that the clinic investment groups are subject to a certificate of need review for these applications. However, because of the conflicting language within the certificate of need law it is not certain whether this decision will survive judicial scrutiny. The subcommittee was informed that magnetic resonance imaging equipment costs over $2.5 million and could add in excess of $1 million a year in operational costs to the health care system in North Dakota.

Subcommittee Recommendation. The subcommittee recommended a bill draft to the committee to eliminate the exemption of physicians and dentists from application of the CON law in those circumstances under which the transaction would otherwise be subject to review. (With a number of modifications the committee accepted the subcommittee's recommendation.)

II. Health Care Innovations Subcommittee

The Health Care Innovations Subcommittee investigated innovative programs in health care aimed at reducing health care costs. Subcommittee members were Senators Jan Dykshoorn (Chairman), Donald J. Kilander, Herschel Lashkowitz, and Art Todd; Representative Joe Peltier; and Citizen Members Wayne L. Allen, Angeline Bushy, William L. Guy, Harvey C. Hanson, William T. Powers, and Emil Wieland. The subcommittee held four meetings at which extensive oral and written testimony was given concerning a wide variety of innovations in the health care field asserted to have cost containment possibilities. Based upon the testimony received and its own deliberations, the subcommittee recommended two bill drafts and a concurrent resolution draft to the committee.

A. Subcommittee Investigation

The subcommittee reviewed a number of previous studies concerning health care cost containment before beginning its deliberations. Among these materials were the North Dakota State Health Plan 1982-1985, a report by the National Conference of State Legislatures health care cost containment project reviewing legislation which the states passed in 1983 dealing with health care costs containment, and a National Conference of State Legislatures report reviewing the major health care cost containment proposals that the states expected to take up in 1984. The subcommittee also reviewed the activities of the 1979-80 Legislative Council's interim Health Care Committee.

The subcommittee was informed of a wide

of innovations in health care intended to reduce health care costs. Testimony before the subcommittee also included concerns about health care issues that have indirect impacts on health care costs. In addition to licensure of respiratory therapists, nurse practitioner regulation, direct reimbursement for nursing services, the effects of lifestyle on health care costs, living wills, and hospice programs, all of which are addressed in this report, the following topics received consideration by the subcommittee:

- Structural deficiencies in the health care economic system.
- The diagnostic-related group based prospective pricing system for hospitals receiving Medicare reimbursement.
- Health maintenance organizations.
- Preferred provider organizations and the effect of health service corporations' policies on the implementation of preferred provider organizations.
- Home health care agencies.
- Primary health concerns in rural areas.
- Uninsured, insured but paying own premiums, and provisions of government insurance (Medicaid/Medicare).
- State licensure of osteopaths by the Board of Medical Examiners.
- Effects of usual, customary, and reasonable rate systems — cost containment or fee setting.
- Analysis of consumer demand for innovative high technology health care services such as air ambulance services.
- Sufficiency of long-term care beds in basic care, intermediate care, and skilled nursing facilities, and trends toward higher intensity care.
- Cost-saving potential of mobile major medical equipment such as computed tomographic (CT) scanners.

The subcommittee considered no bill drafts concerning these topics and made no recommendation for health care cost containment legislation relating to these topics.

B. **Major Topics of Study**

1. **State Licensure of Respiratory Therapists**

The subcommittee considered a proposal for state licensure of respiratory therapists. Supporters of the proposal testified that new developments and changes within the health care industry required this legislation. The subcommittee was informed that the work of respiratory therapists is becoming highly specialized, involving high technology and dealing with cases that in the past were referred out of state. It was suggested that persons practicing respiratory therapy should demonstrate at least entry-level competence, especially because of the potential harm to the public arising from the increased direct contact by respiratory therapy practitioners with the general public resulting from the growing emphasis on preventative and home health care. Representatives of the Dakota Society for Respiratory Therapy suggested that licensing of respiratory therapists would reduce health care costs by reducing unnecessary care presently being provided by therapists who are without sufficient education and training.

Opponents of the proposal asserted that licensure of respiratory therapists would lead to demands for licensure by other disciplines within the hospital setting, which would increase hospital health care costs and enable and encourage these disciplines to set up independent practice. It was asserted that if licensure is required, salaries and costs will go up. To support this claim, the results of a salary survey conducted by the North Dakota Hospital Association were brought to the subcommittee's attention. In response, the statement was made that if the subcommittee was looking at health care providers' salaries as a way to cut health care costs, the subcommittee was looking at the wrong profession.

The Dakota Society for Respiratory Therapy presented a manpower/salary survey which asserted that patient costs for services performed was not dependent on the credentials, education, or experience of the respiratory therapist performing the services, the patient charge being the same regardless of the person's education or training. The subcommittee was also told that because physicians presently control the hiring, judge the qualifications, and direct the activities of the respiratory therapists, the quality of care is adequately ensured and state intervention would only increase health care costs.

Subcommittee Conclusion. The subcommittee considered a bill draft to provide for the state licensure of respiratory therapists but made no recommendation to the committee concerning the licensure of respiratory therapists.

2. **Nurse Practitioner Regulation**

The subcommittee considered the present status of nurse practitioner regulation in North Dakota. The subcommittee heard testimony from health care providers representing varied health care professions, and monitored the activities of the Statewide Health Coordinating Council's (SHCC) Ad Hoc Committee on Health Manpower Distribution, which was studying guidelines affecting nurse practitioners. The SHCC committee brought together representatives from numerous professional and public interest groups, including the Board of Nursing, Board of Medical Examiners, North Dakota State Nurses Association, North Dakota State Medical Association, various health care specialties, nursing schools, and pharmacy interests. Although the SHCC committee met several times between subcommittee hearings, it could not come up with consensus recommendations.

The subcommittee was informed that nurse practitioners are registered nurses who have received additional training to help in the delivery of primary care and specialized nursing services. Some of the issues presented to the subcommittee relating to nurse practitioner regulation were the appropriate level of supervision of the nurse practitioner by the physician, the appropriate scope of practice, and whether health insurance coverage providing for direct reimbursement for services perform-

ed by nurses (including the services of nurse practitioners) should be mandated. Superimposed on these issues was the question of which board, the Board of Nursing or the Board of Medical Examiners, has jurisdiction to regulate nurse practitioners in the performance of services beyond the normal scope of nursing.

Subcommittee Conclusion. The subcommittee made no recommendations to the committee concerning scope of practice and supervision of nurse practitioners, but encouraged the Board of Medical Examiners and Board of Nursing to coordinate their activities and resolve existing ambiguities and uncertainties in applicable laws and rules.

3. **Direct Reimbursement for Services Performed by Nurses**

The subcommittee considered a proposal to mandate coverage providing for direct reimbursement of nursing services by third-party payors (health insurance companies, Blue Shield, etc.). It was suggested to the subcommittee that the effect of the proposal would be to increase access to primary care; and reduce health care costs by providing this access at lower fees than physicians charged, providing care in the absence of a physician, and providing an increased number of appropriate referrals to physicians. It was asserted that independent practice arrangements for nurses as well as the growing scope of accepted nursing practice required some provision for direct payment from third-party payors. Opponents of the proposal suggested that it would provide for independent billing and independent practice outside the supervision of physicians. It was also asserted that mandating third-party coverage would increase health insurance premiums.

The subcommittee considered a bill draft to mandate health insurance coverage providing for direct reimbursement for health care services performed by nurses. Proponents of the bill draft told the subcommittee that it would not change the scope of practice or range of services that could be legally provided by nurses or nurse practitioners, but would only allow nurses to be reimbursed for what they are presently allowed to do under state law. Opponents of the bill draft seriously questioned both the cost-saving potential and the long-term effect of the bill draft on the quality of care.

Subcommittee Conclusion. The subcommittee made no recommendation concerning the mandating of health insurance coverage providing for direct reimbursement for health care services performed by nurses.

4. **Effect of Lifestyle on Health Care Costs**

Representatives of the Department of Health presented detailed testimony on the effects of lifestyle on health and health care costs. It was reported to the subcommittee that with the growing understanding of causes and risk factors for chronic disease, the 1980's present opportunities for major gains in health and health care through the effective use of prevention. The subcommittee was also told that while helping people to understand the importance of healthful lifestyles may not be easy, the dramatic potential benefits clearly make the effort worthwhile.

The lifestyle element of cigarette smoking was focused on in testimony before the subcommittee. It was stated that in 1981 there were 800 deaths in North Dakota which would not have occurred that year had the state's population been composed of lifetime nonsmokers. It was also stated that this mortality rate is more than five times the number of North Dakota traffic fatalities.

The subcommittee was informed that smoking-related deaths from heart disease, cancer, and respiratory diseases represent a high proportion of premature deaths in North Dakota and that smoking-related disability is estimated at 8,500 person-years annually.

It was also brought to the subcommittee's attention that smoking-related illnesses cost about $15 billion for medical care and $34 billion in lost productivity in the nation every year. Medical care necessitated by smoking-related illnesses translates into an annual economic burden on the typical nonsmoking, working age adult in excess of $100 in taxes and health insurance premiums to pay for the health care needs of the victims of smoking. Additional costs of smoking arise from higher rates of absence by employees who smoke, higher occupational accident rates for smokers, and the death and property damage from fires attributable to carelessness with cigarettes. It was suggested to the subcommittee that the subsidization, through use of federal tax dollars, of the tobacco industry was highly inappropriate in light of the economic and health costs resulting from the use of cigarettes.

Subcommittee Recommendation. The subcommittee recommended a concurrent resolution draft to urge Congress to terminate the subsidy of the tobacco industry because of concerns for public health and the desire to reduce health care costs for smokers and nonsmokers alike. (The committee did not accept the subcommittee recommendation.)

5. **Living Wills**

The subcommittee received testimony that legislation providing for legal recognition of living wills has been enacted in other states to provide a means by which a person can direct the withholding or withdrawal of extraordinary life-sustaining procedures if the person is diagnosed as terminally ill. Under the legislation health care providers who rely upon the declarations, popularly known as living wills, are protected. It was suggested to the subcommittee by persons with experience in the health care field that many situations exist where terminally ill patients continue to receive extraordinary life-sustaining procedures for long periods of time due to uncertainty over the desires of the patients, and uncertainties as to the legal ramifications of withdrawing or withholding the extraordinary life-prolonging medical procedures. It was suggested that a living will, recognized by state law, would

provide a regulated means by which people could express their intent concerning how they should be treated if they are ever terminally ill and unable to communicate. It was suggested that such legislation would also protect the physicians and other health care providers.

Opponents of living wills questioned whether such legislation would contain sufficient safeguards such as a requirement that the person making out the declaration be mentally competent, protection for unborn children, and provisions for more extensive availability and exposure of the document. Concern was expressed that this kind of legislation could be one step along the way toward a subtle form of genocide of unwanted elderly.

Proponents of living wills pointed out that no person would be required to execute such a declaration, but that such legislation would only provide a means for those people who wish to indicate their preference. It was added that the individual should be given the preeminent voice in what treatment he or she receives or chooses not to receive. It was also pointed out that a disproportionately large percentage of health care costs are spent in the last year or six months of a person's life, some of which expense is attributable to extraordinary attempts at the prolongation of life.

Subcommittee Recommendation. The subcommittee recommended a bill draft to provide a regulated binding means by which people could express their wishes as to whether extraordinary life-sustaining procedures should be withheld or terminated if they are terminally ill and unable at the time to make such decisions. The bill draft also provided for limited immunity for health care providers acting in good faith reliance on such living wills. (The committee did not accept the subcommittee recommendation.)

6. **Hospice Programs**

Hospice programs were explained to the subcommittee as organized programs of care for people, and the families of people, who are going through the last stages of life. It was described as a humanistic approach of caring for terminally ill patients and their families which includes the following characteristics:

- Both the patient and family are considered the unit of care in hospice programs.
- The primary goal of hospice care is to keep the patient as pain free as possible yet fully alert.
- Hospice programs utilize a team approach for the effective delivery of holistic care.
- Bereavement care for the family is an integral part of the hospice concept.
- Hospice programs utilize volunteers to help provide for many needs of the patient and family.

The subcommittee was told that hospices have many advantages including the treatment of the "whole person," elimination of duplication of services for terminally ill patients, and the provision of care in whatever setting is most appropriate for and desired by the patient and family. Most often this setting is the home.

Representatives of existing hospice programs see no conflict with hospitals in taking patients out of the hospital setting, especially with the advent of the DRG system which will force hospitals to cut their expenses. The subcommittee was informed that hospice care is definitely less costly than hospital care for those patients for which hospice care is appropriate, but hospice care is not appropriate for everyone, including those who want everything done that is possible to prolong and protect life. Statistics for an existing hospice program showed an average cost per patient day was $88.50, which would increase to $93 per patient day if the costs of the volunteer program and bereavement support program were considered, but would drop to $43 per patient day if the costs of doctors and hospital services were factored out.

The subcommittee considered a bill draft to provide for state licensure of hospice programs. Representatives of existing hospice programs supported the bill draft and said licensure was necessary to encourage the development of hospice programs, because licensure is often required before reimbursement will be given by third-party payors such as health insurance companies and Medicaid. It was also pointed out that licensure legislation providing for regulation and certain minimum requirements for hospice programs would help ensure the quality of care provided by what is expected to be a growing number of hospice programs.

It was suggested that a residency requirement might be appropriate to protect the public from unqualified hospice program operations. Concerning this suggestion, it was noted that even though such a requirement is not imposed on hospitals or nursing homes, which may presently be operated by chain or franchise organizations, no serious problems have resulted.

Subcommittee Recommendation. The subcommittee recommended a bill draft to provide for licensure by the Department of Health of hospice programs. The bill draft included requirements for licensure application, inspection, basic standards, and rule-making with respect to hospice programs. (The committee accepted the subcommittee recommendation.)

III. **Medical Malpractice Subcommittee**

The Medical Malpractice Subcommittee examined the sources, costs, and options for legislative action concerning medical malpractice. The subcommittee gave specific attention to the medical malpractice insurance problem and how the costs of medical malpractice relate to costs of health care in general.

Committee members were Representatives Joseph R. Whalen (Chairman), Paul L. DuBord, James Gerl, and Clark Williams; Senator Chester Reiten; and Citizen Members Terry Hoff, W. B. Mitchell, James J. Moses, Orell D. Schmitz, and William A. Strutz. The subcommittee held three meetings at which it reviewed materials and received testimony concerning the causes of the medical malpractice insurance problem

and possible solutions. Based on its deliberations, the subcommittee recommended two bill drafts to the committee and requested the committee to give initial consideration to a third bill draft.

A. **Background**

In the mid-1970's, the growing problem of medical malpractice insurance exploded into a crisis situation when physicians began participating in work slowdowns and strikes to protest the soaring costs of medical malpractice insurance premiums and the lack of availability of medical malpractice coverage. This crisis was precipitated by the withdrawal from the medical malpractice insurance field of a major malpractice insurance carrier. These dramatic actions by physicians in a number of states brought the medical malpractice issue squarely before the public eye.

Various claims were made as to the causes of soaring medical malpractice rates. Medical malpractice claims against physicians were being filed at an ever-increasing rate. The size of claims was also increasing. The average settlement or trial verdict in 1970 was $3,000. In 1975 that figure had grown to $23,400. To keep pace with these increases, insurance premiums had soared from a total of $61 million in 1960 to a total of $1 billion in 1974. The medical malpractice insurance companies asserted that these premium increases were based on sound actuarial principles and were justified by the uncertainty of the size and number of future claims. Critics of the medical malpractice insurance companies claimed that the increased premiums were not justified, pointing to speculative investments in the stock market which unexpectedly reduced insurance companies' surpluses, as well as the subsidization of medical malpractice insurance lines by more profitable lines, such as life insurance, and the questionable claims of insurance company losses when these figures included projected future claims, but omitted interest earned on claims reserves set aside for the projected claims.

Public attention, along with public and private pressure, led to a general rush by state legislatures to take action on the medical malpractice insurance problem. Legislative approaches varied in form from the appointment of study commissions; to the enactment of legislation directed to a specific problem; to the enactment of comprehensive attempts to reform the judicial, insurance, and health care systems. Although the crisis of availability of medical malpractice insurance decreased in the years following 1975, the crisis of medical malpractice costs continued to grow. The average increase in premium rates for professional liability insurance for the period 1974 to 1977 was 168 percent. A 1976-77 survey by the American Medical Association revealed yet more costs which were resulting from physician responses to the increases in medical malpractice claims and medical malpractice insurance premiums. When asked how these increases had affected their practice of medicine, an average of 46 percent of the physicians responding to the survey reported that additional tests were ordered, 20 to 40 percent reported that some cases were being refused, and 20 to 78 percent reported that charges were increased. A National Association of Insurance Commissioners' report stated that the average medical malpractice awared per injury increased 70 percent from 1975 to 1978, with inflation accounting for only 28 percent of that increase.

Some direct costs related to medical malpractice are premiums paid to commercial and physician-created insurance companies; capital invested by physicians in physician-created insurance companies; hospital costs for professional liability insurance; costs of risk management for physicians and hospitals; additional costs for physicians' and hospital employees' malpractice insurance premiums; and costs of office premises liability coverage. Among the areas of indirect costs of medical malpractice are defensive medicine and defensive administration costs; the costs of early retirement by physicians; loss of income for time spent by health care providers on pretrial and trial activities; and the costs of general physician dysfunction brought on by the filing of a medical malpractice claim.

B. **Previous Action**

The subcommittee reviewed actions taken by the 1975-76 Legislative Council's interim Committee on Industry, Business and Labor "C". That committee recommended five bills which attempted to deal with the medical malpractice problem. Two of these bills, one dealing with the ad damnum clause (statement of damages clause) and the other providing for a patients' bill of rights, were not enacted into law. After a number of amendments, the other three bills were enacted into law, establishing a requirement that health care providers report to the Commissioner of Insurance any claim, settlement, or final judgment relating to medical malpractice; initiating a comprehensive attempt to deal with the medical malpractice problem which limited the liability of qualified health care providers, created a trust fund to assure injured patients full recovery of damages, and established a commission on medical competency; and creating a medical review panel to review medical malpractice claims prior to the initiation of a lawsuit.

This comprehensive attempt to deal with the problem of medical malpractice insurance was challenged on constitutional grounds in Arneson v. Olson, 270 N.W.2d 125 (N.D. 1978). In Arneson the North Dakota Supreme Court reviewed a Burleigh County District Court decision which held that the Medical Malpractice Act violated the Equal Protection Clause and due process provisions of the 14th Amendment of the Constitution of the United States, and also violated sections of the Constitution of North Dakota.

In reaching its decision the trial court had found that "(a)lthough over the past years the premiums for professional liability insurance for physicians and surgeons have increased substantially nationwide and in the state of North Dakota, there does not appear to (be) an availability or cost crises (sic) in this state." The North Dakota Supreme Court held that the "cumulative effect of the limitation of the application of the Act to only one category of health-care professionals . . ., the arbitrary requirement of consent under conditions of duress and statutory imposition of 'consent' in emergencies . . ., the limitation on the use of the doctrine of res

ipsa loquitur . . ., and the near-abolition of the collateral-source doctrine . . . is to violate the right of medical patients in this state to due process of law." The Supreme Court held that as a whole the Act was arbitrary, unreasonable, and discriminatory, and that the means used by the state had no reasonable relation to the stated goals and purposes of the statute. After analyzing each individual provision of the Act, and examining the portions of the Medical Malpractice Act which were not invalidated by its decision, the court concluded that without those provisions declared unconstitutional, the Legislative Assembly would not have enacted the Medical Malpractice Act. The Supreme Court therefore declared the entire Act unconstitutional and void.

The Medical Malpractice Claim Review Panel procedure and the Commission on Medical Competency were not challenged in Arneson, and the Supreme Court therefore expressed no opinion on these matters. However, in light of two district court declarations that the medical review panel statute was unconstitutional, and because of certain implementation problems and operational delays, the medical review panel statute was repealed by the Legislative Assembly in 1981. The statutes creating the reporting requirement and the Commission on Medical Competency are still in effect.

Also in effect concerning medical malpractice is NDCC Section 28-01-18 which sets the statute of limitations for an action for damages resulting from malpractice. Chapter 26.1-14 authorizes the creation of the North Dakota Medical Malpractice Mutual Insurance Company, which may be implemented upon a majority finding of the State Board of Medical Examiners that physicians practicing medicine in North Dakota are having difficulty in obtaining medical malpractice insurance. This chapter has not been implemented. Also, Section 28-01-46, enacted in 1981, requires the patient to find an expert opinion to support an allegation of professional negligence within three months of the commencement of an action based upon professional negligence in all except specified obvious cases. Failure to obtain such supporting expert opinion may result in dismissal of the action.

C. **Subcommittee Investigation**

After hearing testimony from representatives of the Commissioner of Insurance, the subcommittee took no action concerning the present status of the medical malpractice claim reporting requirement. It was the subcommittee's decision that any changes which were needed could be handled through rulemaking by the commissioner. After reviewing previous action by the Legislative Assembly and actions taken by other states in attempts to solve the medical malpractice insurance problem, the subcommittee focused its investigation on the areas of the ad damnum clause; the statute of limitations concerning malpractice; the collateral source rule; advance payments to malpractice claimants without admission of guilt; and the multiple defendant problem in medical malpractice cases.

1. **Ad Damnum Clause**

The ad damnum clause is a pleading requirement in legal actions involving liability damages in which the plaintiff states the specific amount of monetary damages to which he believes he is entitled. The subcommittee discussed proposals which would eliminate the requirement of pleading the specific amount of damages, or prohibit the pleading of such specific amounts, in some or all legal actions. The subcommittee also reviewed attempts to introduce such changes in prior legislative sessions.

It was reported to the subcommittee that the statement of a specific amount of claimed damages may result in adverse publicity and cast a stigma upon the doctors involved if the claim for damages is very high. The subcommittee heard testimony alleging that juries would award relatively smaller amounts if the ad damnum clause were eliminated. The subcommittee was informed that in some cases, however, the specific statement of damages is important because if the amount of damages claimed is above the medical malpractice insurance policy coverage limit, the insurance company will give notice that the doctor/defendant may wish to retain an additional lawyer. It was also noted that the claim for specific monetary damages serves as a guide to the jury. It was suggested that in some situations the specific amount might serve to limit the amount of damages awarded rather than increase them.

Subcommittee Conclusion. The subcommittee decided to take no action concerning the ad damnum clause pleading requirement.

2. **Statute of Limitations**

A statute of limitations governs the length of time during which a person may bring a legal action for an alleged wrong. In medical malpractice actions, the limitation is usually expressed as one of two applicable periods, the first running from the time the injury is discovered (or should have been discovered) and the second running an absolute maximum number of years from the time the injury occurred. Most states that have changed the statute of limitations for medical malpractice have shortened one or both of these periods. The two limitations periods in North Dakota for medical malpractice actions have been set at two years from the time the medical malpractice is discovered, or should have been discovered, and an absolute maximum of six years from the time of the act or omission of alleged malpractice (unless discovery was prevented by the fraudulent conduct of the physician or hospital, or the plaintiff was under a legal disability). The interest in the statute of limitations for medical malpractice comes from its creation of a "long tail" or a residue of cases which are not filed or litigated in the year in which the injury occurred. However, the statute must be long enough to provide reasonable opportunity for plaintiff-patients to discover latent or consequential injuries.

The subcommittee focused its attention on the allowable period of extension of the limitations period for minors. It was reported to the subcommittee that by statute certain

classes of claimants are deemed to be under legal disabilities, and while these people remain under these legal disabilities the limitations period generally does not run. One of these disabilities is infancy, which is set by NDCC Section 28-01-25(1) as "under the age of 18 years." This section extends the applicable limitations period by providing that "the time of such disability is not a part of the time limited for the commencement of an action." The section also provides, however, that the period within which the action must be brought cannot be extended in any case longer than one year after the disability ceases. (In the case of infancy one year after the age of 18 is reached.) Concerning actions alleging professional malpractice, the section specifically provides that "extension of the limitation due to infancy is limited to twelve years."

The North Dakota Medical Association had proposed setting an absolute maximum statute of limitations period for minors at eight years. This proposal was amended to the existing period of 12 years when the law was enacted in 1983. The rationale given for the change from eight to 12 years was that the longer period would ensure that minors with potential medical malpractice claims have a longer time in which physical and mental disabilities caused by medical care could be recognized because of the minors' physical development and exposure to people outside their immediate families. It was suggested that the rapid development in the area of neonatal intensive care units may create even more possibilities of medical malpractice suits by minors. It was also suggested that the topic of medical malpractice statutes of limitations for minors should be examined every legislative session to ascertain whether changed conditions justify modifying the statute of limitations for medical malpractice.

Subcommittee Conclusion. It was the consensus of the subcommittee that because the statute of limitations for medical malpractice applicable to minors had received extensive review and analysis during the 1983 Legislative Assembly, it would be appropriate to put off any new changes until the effects of changes enacted during the 1983 session could be ascertained and analyzed.

3. **Collateral Source Rule**

The collateral source rule in civil actions prevents the introduction of evidence that a patient's injury-related expenses have been reimbursed by other compensation plans such as private insurance, workmen's compensation, etc. It was reported to the subcommittee that this rule sometimes results in a double recovery for the plaintiff. It was suggested that elimination or modification of the collateral source rule might result in reduced liability for the defendants' insurers and eventually reduce the costs of medical malpractice insurance premiums.

The subcommittee discussed a proposal that, in setting the amount of damages awarded to a plaintiff in a medical malpractice action, state law should require or permit the offsetting of compensation or payments received by the plaintiff from some or all collateral sources (i.e., sources other than the defendant). It was suggested to the subcommittee by a representative of a major medical malpractice insurance company that if such a provision could be enacted into law, it would lower malpractice insurance premiums. The subcommittee was told that overlapping payments for the same injury increase the costs of medical malpractice judgments, increase the cost of medical malpractice insurance premiums, and therefore increase the cost of health care for everybody.

The opinion was expressed that the collateral source doctrine was adopted by the courts so that injured parties could retain the benefits they had earned or purchased through their own insurance. However, it was also said that if evidence of all collateral source payments could be introduced at trial and any deduction from the damages claimed by the defendant left to the discretion of the trier of fact, this would be beneficial because it would make it possible for all the facts to be put before the judge or jury so that the true financial situation is known.

Subcommittee Recommendation. The subcommittee recommended to the committee a bill draft to provide for the admissibility at trial of evidence relating to payments received by the plaintiff from collateral sources, and the discretionary deduction by the trier of fact of some or all of such payments from the damages awarded to successful medical malpractice plaintiffs. (The committee accepted the subcommittee's recommendation with minor modifications.)

4. **Advance Payment Without Admission of Guilt**

Among the many actions taken by state legislatures in response to the medical malpractice crisis of the mid-1970's was the enactment of laws providing for advance payment to medical malpractice claimants by health care providers or their insurers without admission of guilt. The subcommittee was told that voluntary payments prior to a verdict should be encouraged since they often make it possible for plaintiffs to receive prompt remedial medical care, or to sustain themselves without undue hardship, creating an atmosphere of cooperation and concern which may lead to an early and amiable settlement. It was suggested to the subcommittee that such a provision served to encourage the insurers and providers to make such payments, and also protected the plaintiff/patient. The subcommittee was also informed that in some instances such partial payments satisfy the complaining patient to the degree that the patient does not bring suit against the health care provider.

As part of the Comprehensive Medical Malpractice Act passed in 1977, the Legislative Assembly enacted such a provision into law. The provision became void, however, when the entire Comprehensive Medical Mal-

practice Act was declared unconstitutional. The subcommittee was informed that even though health care providers and their insurers are covered by existing law concerning voluntary partial payments (NDCC Sections 32-39-01, 32-39-02, and 32-39-03) there has been a reluctance in cases claiming medical malpractice to provide services or make partial payments, and a specific provision might ease this reluctance. It was reported to the subcommittee that advance payments are made fairly frequently in automobile accident cases if the potential defendant's negligence is fairly clear; however, such negligence is more difficult to ascertain in the more complex and technical medical malpractice cases. It was suggested that any proposal for legislation provide that if the plaintiff does not win at trial, or if the plaintiff is awarded less than the advance payments, the advance payments are still the plaintiff's, and the plaintiff would not owe anything to the health care provider or the insurer.

Subcommittee Recommendation. The subcommittee recommended to the committee a bill draft relating to voluntary service or partial payment of claims without admission of guilt. The bill draft provided for the amendment of NDCC Sections 32-39-01, 32-39-02, and 32-39-03 to make coverage of malpractice claims explicit and to add coverage of "services rendered." (The committee accepted the subcommittee's recommendation.)

5. **Multiple Defendants**

A National Association of Insurance Commissioners' survey found that more than 40 percent of medical liability claims involve more than one defendant, and it is not uncommon for a patient, especially in a case involving a surgical procedure, to sue three or more health care providers. Often this means that persons who have had little or no involvement in the medical treatment at issue are subjected to the inconvenience and emotional trauma of being included in, and having to defend, a lawsuit. Health care providers claim that many plaintiffs' attorneys indiscriminately join all providers who might conceivably have had any responsibility for the injury. From the point of view of the attorney, however, it is risky not to name as defendants all persons who have apparently had contact with the injured patient, since to do otherwise might mean a person who is partially or totally responsible at law for the injury might go undetected or be protected from liability by the running of the statute of limitations.

The subcommittee was told that the excuse often given for filing suit against all doctors named in the medical records is that the injured client comes to the attorney shortly before the statute of limitations would expire, leaving the attorney no choice but to sue everyone. It was reported to the subcommittee that while this can occur in other areas of the law, it happens more often in medical malpractice cases because of the complex nature of the issues, and because of the great volume of records that must be searched to determine the appropriate defendants.

Subcommittee Conclusion. After reviewing a number of proposals concerning the multiple defendant problem, the subcommittee requested that a bill draft be prepared, for initial consideration by the committee, that would utilize the concept of "respondents in discovery" from the Illinois Code of Civil Procedure. This concept provides that the plaintiff in any action based on the allegation of negligence in the performance of health care services may designate as respondents in discovery those individuals other than the named defendants, believed by the plaintiff to have information essential to the determination of who should properly be named as additional defendants in the action.

Committee Recommendations — Government Regulations

The committee reviewed the subcommittee's conclusion concerning the DRG system and possible state alternatives, received additional testimony, and decided to make no recommendation concerning this issue.

The committee followed the subcommittee's suggestion concerning duplication in payment for state employee health insurance by investigating the present billing procedure for state employee health insurance and the projected changes in that procedure. The committee found that while proposed changes in the billing procedure had some cost-saving potential, none dealt directly with the problem of duplicate premium payment. The committee was uncertain whether there was a problem with payment for overlapping health insurance for state employees, and found no acceptable solution to whatever problem might exist in this area. The committee therefore makes no recommendation on this issue.

After receiving the subcommittee's report concerning HMO reporting requirements and reviewing the testimony on the issue, the committee accepts the subcommittee's recommendation and recommends Senate Bill No. 2076 to change the HMO reporting requirement to require a fiscal year report instead of a calendar year report.

The committee reviewed the subcommittee's recommendation concerning Health Council membership and heard testimony from a number of groups representing the elderly advocating the designation of one of the proposed additional consumer members as a representative of the elderly. The committee decided that the elderly's substantial interest in health care cost merited a designated representative on the Health Council. The committee recommends Senate Bill No. 2074 to add four consumer members to the Health Council to represent business, labor, agriculture, and the elderly.

The committee reviewed the subcommittee recommendation concerning CON thresholds and considered a proposal to include in the bill draft an amendment to clarify the situations under which CON is applicable to purchases of major medical equipment not owned by or located in a health care facility if such equipment is used to provide services to patients of a health care facility. This proposal was offered as part of a compromise involving the removal of the CON

exemption for physicians and dentists. The committee recommends Senate Bill No. 2075 to delete the present reference to federal law concerning indexing, set fixed thresholds, delete confusing and superfluous language, and clarify the scope of coverage of CON relating to equipment used to provide services to patients of health care facilities. The bill also removes the CON exemption for physicians and dentists.

Committee Recommendations — Health Care Innovations

The committee reviewed the subcommittee's recommendation concerning an antitobacco subsidy resolution draft and received additional testimony from a representative of the Tobacco Institute, a representative of the American Lung Association of North Dakota, and other interested persons. A proposal to amend the resolution draft to urge Congress not to cut the cigarette excise tax in half was rejected. The committee was told that the political realities suggested that North Dakota, with its substantial interest in agriculture, should not be an advocate of stopping an agricultural subsidy. The resolution draft was tabled, and the committee makes no recommendation concerning the effects of lifestyle on health care costs.

The committee reviewed the subcommittee's recommendation concerning legal recognition of living wills, and after hearing a substantial amount of testimony in opposition to the recommended bill draft, the committee decided not to make any recommendation concerning living wills.

The committee considered the subcommittee's recommendation concerning licensure of hospice programs and received a number of suggestions from hospice program representatives. Among the suggestions was a request to remove the full-time employment requirement for the registered nurse who must serve as patient care coordinator for the hospice program. It was suggested that the full-time requirement could inhibit the creation or operation of hospice programs in rural areas. To facilitate access to hospice programs in rural areas, the committee accepted the suggestion, removing the full-time requirement. The committee recommends House Bill No. 1063 to provide for state licensure of hospice programs.

Committee Recommendations — Medical Malpractice

After reviewing the subcommittee's recommendation concerning modification of the collateral source rule, the committee received a proposal that the bill draft not allow the introduction of evidence showing payments from life insurance policies for possible offset against any court award of damages. It was suggested that life insurance was not designed for the same purpose as many of the other collateral source benefits, and was not an appropriate source for offsets. The committee removed life insurance as one of the collateral sources covered by the bill draft. The committee recommends House Bill No. 1064 to provide for the admissibility at trial of evidence relating to payments received from collateral sources, and the discretionary deduction for the trier of fact of some or all of such payments from damages awarded to successful medical malpractice plaintiffs.

The committee accepted the subcommittee recommendation and recommends House Bill No. 1066, relating to voluntary services or partial payment of a claim without admission of guilt. The bill makes the applicability of NDCC Sections 32-39-01, 32-39-02, and 32-39-03 to medical malpractice claims explicit, and substantively amends the sections by including coverage of "services rendered," in addition to "partial payment" of claims without the admission of liability.

The committee recommends House Bill No. 1065 to provide that the plaintiff in any action based on the allegation of negligence in the performance of health care services may designate as respondents in discovery those individuals other than the named defendants, believed by the plaintiff to have information essential to the determination of who should properly be named as additional defendants in the action. Persons named as respondents in discover are required to respond to discovery requests by the plaintiff in the same manner as are defendants and may on the motion of the plaintiff be added as defendants under certain circumstances. A person named as a respondent in discovery may be made a defendant on that person's own motion. A respondent in discovery in any civil action may be made a defendant in the same action at any time within six months after being named a respondent in discovery (even though the statute of limitations may have expired during that six-month period), but not after that time (even if the statute of limitations has not expired during the six-month period). As an additional safeguard for the respondent in discovery, a respondent in discovery must be considered a party for purposes of the rules of civil procedure concerning discovery, with all a party's rights and duties.

STATE HEALTH INSURANCE PROGRAM STUDY

1983 House Concurrent Resolution No. 3093 directed the Legislative Council to study the concept of a state self-insurance health benefits program. The Public Employees Retirement Board conducted such a study during the 1981-82 interim. The study was conducted with outside professional input from the Martin E. Segal Company, Inc.

Health insurance benefits are offered to public employees under the provisions of a uniform group insurance program. The retirement board is responsible to account for and arrange the provision of health insurance benefits for state employees. Prior to the 1983 Legislative Assembly, the board was required by law to let bids and contract for the provision of state employees' health insurance with the insurance carrier determined to be best able to provide such insurance. That carrier, from the beginning of the uniform state program, was Blue Cross/Blue Shield of North Dakota. Therefore, from 1971 to 1983 Blue Cross/Blue Shield of North Dakota provided and administered the health insurance benefits for state employees.

Rapidly increasing costs of medical care and health insurance premiums have caused many group insurance buyers to consider alternatives to the purchase of conventional health care insurance coverage. According to the Martin E. Segal Company, Inc., a dual approach using self-funding and administrative services only (ASO) agreements is a practical alternative for many such group plans.

The concept of self-funding envisions the buyer (i.e., the state) agreeing to make direct payments for benefit claims under an insurance policy. Such an arrangement, therefore, places the buyer, rather than the insurance company, "at risk" for the payment of all such claims. Assuming that the plan is actuarially sound the buyer is actually "at risk" only for catastrophic claims. This is so because the insurance

premiums paid are normally based on an actuarial expectation that claims will accumulate between 70 percent to 85 percent of the total premiums paid.

A protection provided by insurance companies to self-funded plans is stop-loss insurance coverage. This type of coverage is a form of reinsurance by which a self-funded plan can limit or control the extent to which it is liable for claim payments. Therefore, stop-loss insurance provides catastrophic major medical coverage by using high deductibles and high limits.

The second part of the dual approach involves administrative services. These services may include everything from the establishment of coverages to the payment of insurance claims, and generally make the plan work on a day-to-day basis. It is up to the insurance buyer to determine what services in relation to the plan could most efficiently be performed by a third party under an ASO contract.

The 1983 Legislative Assembly approved Senate Bill No. 2093 (introduced at the request of the Public Employees Retirement System) which authorized the retirement board to establish a plan of self-insurance for providing health insurance benefit coverage only under an ASO contract or a third-party administrator contract. The option to implement a self-insurance plan has been exercised and as of July 1, 1983, the board began administering the funding of the North Dakota public employees group insurance plan with Blue Cross/Blue Shield of North Dakota providing administrative services and stop-loss reinsurance coverage to limit the state's insurance liability.

The sponsor of House Concurrent Resolution No. 3093, which required a review of the feasibility of implementing a state self-insured health benefits program, indicated to the committee that even though 1983 Senate Bill No. 2093 was approved, an interim committee should review the self-insurance program.

The committee held hearings to monitor the self-funded insurance program. Under the former insurance program, Blue Cross/Blue Shield of North Dakota retained 5.98 percent of the total state premiums paid to perform a full service contract. Under the self-insurance program, Blue Cross/Blue Shield of North Dakota performs administrative services only and receives 3.98 percent of the total claims paid by the state program. Blue Cross/Blue Shield of North Dakota also provides stop-loss insurance for the state self-insurance program. The stop-loss insurance requires Blue Cross/Blue Shield to pay individual claims exceeding $25,000 or total costs of the state program in excess of 125 percent of total claims over total premiums paid. It was reported that savings will accrue to the state under the new self-insurance program because interest income earned on the insurance fund reserve is retained by the state and premium risk charges are no longer paid to Blue Cross/Blue Shield. The state health insurance fund is estimated to have $5,300,000 reserve fund by 1985. Testimony by the executive director of the Public Employees Retirement System indicated that the state should anticipate savings of approximately $500,000 per year under the self-insurance program.

The executive director of the Public Employees Retirement System recommended that in the future the state should contract directly with providers and self-administer the health insurance program. It was indicated that the state could administer the program at less cost than what is currently being paid to Blue Cross/Blue Shield and that with over 3,000 enrolled state employees there does exist a significant group with which the Public Employees Retirement System could negotiate health care costs.

It was reported by the executive director of the Public Employees Retirement Sytem that the state now pays approximately $501,000 per year for administration of the self-insurance program and that the Public Employees Retirement System could handle administration of the health insurance program at an annual cost of approximately $300,000 per year. Representatives from Blue Cross/Blue Shield questioned why the state would be willing to assume the risk of health care insurance in light of the fact that there currently exists more than 82 private companies selling such insurance in North Dakota. It was projected by Blue Cross/Blue Shield that the state self-insurance program will show a loss of between $1,200,000 and $2,200,000 over the 1983-85 biennium. Finally, Blue Cross/Blue Shield representatives disputed the assertion that the Public Employees Retirement System could more effectively negotiate health care costs. Testimony indicated that the average hospital margin of income over expenses is less than five percent so that any health care benefits discount provided to the state insurance program must be accounted for by increased costs to those insureds with no discount. It was therefore suggested that the committee carefully consider the intrusion into private enterprise that would result from state self-administration of the health insurance program.

Conclusion

The committee makes no recommendation for legislation regarding changes in the state health insurance program.

INSURANCE TAXES AND FEES STUDY

Insurance Premium Tax

The Legislative Research Committee's interim Committee on Taxation conducted a study in 1960 which included the commission of a report entitled "Tax Equity in North Dakota" by William E. Koenker and Glenn W. Fisher. No recommendation was made to alter the taxation of insurance companies. During the 1961-62 interim the Legislative Research Committee's Taxation Committee studied insurance taxation and considered a proposal that would have taxed domestic insurance companies under the gross premium tax in the same manner as out-of-state insurance companies. The proposal was not recommended to the Legislative Research Committee. Prior to 1983, no other past studies have recommended nor have any bills substantively changed the gross premiums tax which was originally enacted by the Dakota Territorial Government in 1883.

The committee reviewed the history of the state's insurance premium tax. Prior to the 1983 Legislative Assembly, the Commissioner of Insurance was authorized to collect the following taxes annually from insurance companies doing business within the state:

> From every insurance company doing business in this state except stock and mutual companies organized under the laws of this state, a tax equal in amount to two and one-half percent of the gross amount of premiums, membership fees, and policy fees received in this state . . . . NDCC Section 26-01-11(1).

Therefore, the premium tax was imposed on "foreign" insurance companies at a rate of 2.5 percent of

the gross amount of premiums, membership fees, and policy fees received in this state by those companies while domestic insurance companies paid state income taxes rather than the premium tax. Prior to 1983 the premium tax had not been significantly changed since its original adoption by the Dakota Territorial Government.

In 1982, almost 100 years after its original adoption, the premium tax was challenged as being in violation of the state and federal constitutions. In Metropolitan Life Insurance Company, et al. v. Commissioner of the Department of Insurance of North Dakota, et al., the plaintiffs, four out-of-state insurance companies doing business in North Dakota, alleged in part that the insurance premium tax was discriminatory in nature because it imposed higher rates against out-of-state insurance companies than what was being paid by domestic insurance companies under state income tax laws. District Court Judge Larry M. Hatch in his memorandum opinion found that the statute was discriminatory in nature and therefore in violation of the plaintiff's rights of equal protection under both the North Dakota and United States Constitutions. Judge Hatch further ruled that there was not shown to exist any legal basis for this discrimination. Therefore, on February 15, 1983, Judge Hatch declared NDCC Section 26-01-11(1) to be unconstitutional and prohibited the state from any further enforcement of the insurance premium tax against the plaintiffs.

The insurance premium tax case discussed above was appealed to the North Dakota Supreme Court by both the plaintiffs and the state. The North Dakota Supreme Court has withheld its final decision on the case pending a United States Supreme Court decision regarding a similar case which arose in Alabama.

In response to the court decision described above, the 1983 Legislative Assembly enacted Senate Bill No. 2493 which provides a uniform tax of two percent of the gross amount of all life insurance premiums, one-half percent of the premiums received for accident and sickness insurance, and one percent on premiums from all other lines of insurance sold in North Dakota whether by a domestic or a foreign company. The tax is retroactive and applies to taxable years beginning after December 31, 1981, except for nonprofit health service corporations and health maintenance organizations which are liable for the tax after December 31, 1982. Insurance companies, nonprofit health service corporations, health maintenance organizations, and prepaid legal service organizations may receive various tax credits including a credit against the premium taxes due for 1982 through 1985 for an amount equal to the ad valorem taxes on property occupied as a principal office.

The new insurance premium tax has not faced a legal challenge by any insurance companies and was described by the plaintiff's lawyer in the Metropolitan Life case as being a good solution to a complex problem. The president of Blue Cross of North Dakota reported that his company will be able to continue efficient operations with the one-half percent premium tax but added that a two percent premium tax would be difficult to absorb. The president of CapCare indicated the new tax on health insurance premiums will work much like a sales tax to increase the cost of health care services. He also advised the committee that the tax gives an advantage to self-funded health care plans since they are not taxed or subject to insurance regulations.

A representative of the Commissioner of Insurance reported that revenue under the new insurance premium tax should be approximately the same as revenue received under the old insurance premium tax. It was reported that $10,180,000 was generated during the 1982-83 fiscal year under the old insurance premium tax and approximately $10 million was estimated to be generated for the 1983-84 fiscal year under the new insurance premium tax. Therefore, no dramatic change in the amount of revenue produced from the insurance premium tax is expected. It was reported that revenue will not be dramatically reduced under the new insurance premium tax primarily because of additional revenue received from the newly imposed health insurance premium tax.

Insurance Company Fees and Charges

A representative of the Commissioner of Insurance reported there are currently 23 different types of fees or charges being paid by insurance companies doing business in North Dakota. Testimony also indicated that many of the insurance company fees being charged by North Dakota are less than those same fees being charged in other states. An example given was North Dakota's insurance company license fees which are $25 per year compared to other states which are charging up to $400 per year. The Deputy Commissioner of Insurance recommended increasing all insurance company service fees to a minimum of $10 or eliminate them altogether. He reported that the current fees are low compared to most other states. He testified that many companies do not update their rolls of active insurance agents. Rather those companies often simply pay the license fees for all listed agents because the state's fees are so low. He recommended the fees be increased to bring them closer to what other states charge and to serve as encouragement for insurance companies to keep their agent rolls up to date. He also noted that state law does not provide the commissioner with authority to charge an insurance company appointment of agent fee. He reported that other states charge this fee and recommended that North Dakota also charge insurance companies for the annual appointment of their agents. A representative for domestic insurance companies said the insurance companies he represented did not object to the proposed fee increases.

Recommendations

The committee makes no recommendation for legislation to amend the insurance premium tax law.

The committee recommends Senate Bill No. 2077 to increase all insurance company service fees in NDCC Section 26.1-01-07 to a minimum of $10 and to establish an insurance company appointment of agent fee of $10.

BUSINESS CLOSINGS STUDY

Background

The primary sponsor of the business closings study resolution testified that corporate flight is occurring throughout the United States with large corporations closing their plants and relocating in other markets such as Japan. He indicated that plants are often closed with very little or no advance warning given to employees or the communities. It was indicated that unemployment resulting from those business closings causes increased psychological stress and death rates among unemployed workers as well as adverse economic ramifications for business communities. It was

therefore suggested that the committee consider legislation requiring businesses to give advance notice prior to the closing of a plant, to guarantee health care insurance coverage to dislocated workers for a limited period of time after their termination, and to build a reserve fund to provide affected communities with financial resources with which to recover from the adverse impacts of business closings.

The committee was provided with statistics compiled by Job Service North Dakota relating to business closings. Statistics for 1981 indicate that 1,833 new businesses became active in North Dakota and 35 of those new businesses employed more than 50 persons. A total of 2,262 businesses became inactive during 1981 with 186 of those businesses employing more than 20 persons. Statistics for 1982 indicate that a total of 2,022 new businesses became liable for unemployment taxes with 37 of those businesses employing more than 50 persons. A total of 1,664 businesses became inactive and ceased to do business within the state during 1982. Eighteen of those businesses that closed during 1982 employed more than 20 persons. Statistics for the first quarter of calendar year 1983 indicate a total of 387 new employers became liable for unemployment taxes with four of those new businesses employing more than 50 persons. During that same period 129 businesses became inactive with none of those businesses employing more than 50 persons and only two businesses employing more than 20 persons. From 1981 through the first quarter of 1983, North Dakota has had 20 new businesses employing more than 100 employees begin operation within the state and has witnessed 18 businesses each with more than 100 employees close their operations within the state. Fifteen of those "large employers" discontinued North Dakota business operations in 1981 and no such business closings occurred during the first quarter of 1983.

State and National Response

One method of reform often mentioned in relation to the problems of business closings would require businesses to give advance notice of plant closings. Advocates of an advanced notice requirement for business closings argue that such a notice requirement would provide time to explore ways to keep a plant open, to plan and implement job search strategy to keep workers employed, to plan for the decrease in tax revenues and the increase in public expenditures, to plan for disruption of the local economy, to obtain government aid before the plant closes, and to cushion the psychological blow from a plant closing.

Bills to regulate plant closings have been considered in at least 21 states. In general the proposed laws would require firms to give advance notification of a plant shutdown, provide severance pay to employees, compensate localities for the loss of tax revenue, and pay for the relocation and retraining of employees. As of late 1982, these measures have met with little success. Maine, Michigan, and Wisconsin have approved different forms of plant closing laws. Maine law requires that a firm leaving the state must make severance payments to workers left behind and also requires firms employing more than 100 people to notify the state not less than 60 days prior to a plant relocation. Similarly, Wisconsin law requires large employers who decide on a relocation or merger which affects employee job security to notify the state at least 60 days prior to such action. Wisconsin law also requires firms to give advance notice of the termination of group hospitalization and medical expense insurance whenever such coverage will be terminated due to a default in premium payments or a cessation of the employer's business. In comparison, Michigan law requires the State Department of Labor to encourage businesses to give voluntarily some type of notice in advance of a decision to close in order to allow employees to buy the business or make other arrangements for employment.

Another suggested approach to both layoffs and plant closures is the employee-ownership plan. Employee-ownership plans are programs through which employees may buy all or part of a plant from shareholders and prevent a shutdown of the plant or layoffs. Employee ownership proposals generally are initiated in plants that are showing a marginal profit and that are not showing signs of total financial failure. According to the National Center for Employee Ownership, within the past few years this practice has grown to include nearly 5,000 businesses and 2,000,000 to 3,000,000 participants. At least 10 states have enacted laws to facilitate employee-ownership programs. Those states are California, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Ohio, and West Virginia.

The federal government has also been involved in employment and training programs. The Comprehensive Employment and Training Act of 1978 (CETA) extended public service employment, job training, and other employment-related programs through September 30, 1983. A total of $2.1 billion in federal assistance was provided under CETA for education, classroom and on-the-job training, work experience, retraining, job search, and other assistance programs. That Act has been fully replaced by the Job Training Partnership Act which was signed into law in October 1982. The Job Training Partnership Act establishes programs to prepare unskilled persons for employment. It is designed to accomplish this by creating training opportunities for people who have serious barriers to employment. Title III of the Job Training Partnership Act allocates funds for employment and training assistance for dislocated workers. To qualify for funds under this title, states must "match" the federal allotment.

A representative from Job Service North Dakota testified that the dislocated worker program permits employees who have been notified that they will be laid off from their employment to become eligible to receive employment assistance. It was testified that the program provides a variety of services such as referrals to employers, vocational education training, and relocation assistance. North Dakota received approximately $185,000 in federal funds for the 1984 program year. Job Service North Dakota reported that regular unemployment benefits are paid to employees immediately upon their employment termination for a period of up to six months with a maximum benefit of $172 per week. Retraining assistance under the dislocated worker program may begin at the same time for a maximum period of 104 weeks. Benefits under the dislocated worker program may apply for the payment of tuition, books, and tools and a maximum support allowance of $54 per week.

It was recommended by a representative of the Active Corps of Executives that a concerted managemet assistance program be implemented to assist in the management of failing businesses. The State

Department of Vocational Education currently has seven such programs operating within the state with a maximum of 30 businesses receiving assistance through each program for a total of 210 businesses per year. It was suggested that since there have been 2,000 business closings in North Dakota in each of the past two years, there is a real need to expand this program.

The committee focused its attention on legislation requiring advance notice of business closings. Testimony received by the committee indicated the major reasons for business closings include mismanagement, inadequate capitalization, inflation, high interest rates, and high taxes. The North Dakota Retail Association opposed any legislation requiring the advance notice of business closings. Testimony from a representative of that association indicated that a business will continue to operate until there is no longer a market for its products. It was testified that even those businesses which are eventually forced to close do have a positive impact on communities by employing people and improving the economic cash flow within those communities. It was suggested that legislation requiring advance notice of business closings would discourage new businesses from investing in North Dakota. Finally, it was suggested that business and labor groups are free to negotiate individually plant closing notice requirements and self-financed relief funds. A representative of Steiger Tractor Company opposed legislation requiring advance notice of business closings. He testified that his company provides its employees with three months' severance pay. He noted that his employer and many other businesses spend large amounts of money on employee training and usually receive no advance notice of an employee's resignation.

Conclusion

The committee makes no recommendation for legislation regarding business closings.

BID PREFERENCE LAWS STUDY

The committee reviewed North Dakota's bid preference laws for public contracts. Under NDCC Section 43-07-20 employers performing public construction, repair, or maintenance, are required to "give preference to the employment of bona fide North Dakota residents." Section 44-08-01 requires state institutions and political subdivisions which purchase any goods, supplies, merchandise, or equipment to give preference to North Dakota resident bidders or sellers. The preference given to North Dakota resident bidders is only equal to that of any preference given by the state of a nonresident bidder. Section 48-02-10 requires state agencies and political subdivisions to provide a preference for the purchase of materials manufactured or produced in this state. Therefore, North Dakota has bid preference laws which protect the employment of North Dakota resident employees on public works contracts, prefer North Dakota resident equipment and supply contractors to the extent that a nonresident bidder's state would prefer that bidder, and require a preference for the purchase of North Dakota manufactured or produced materials.

In June 1983, Minnesota Statutes Annotated Sections 16.072 and 16.0721 came into effect. These sections were commonly known as the "Buy Minnesota" law. The law required all state agencies, colleges, and universities to award public construction or improvement contracts to Minnesota residents if competitive bidding was not required. Minnesota Statutes Annotated Section 16.07 requires competitive bidding for all contracts estimated to be in excess of $5,000 for "construction or repairs and all purchases of and all contracts for supplies, materials, purchase or rental equipment, and utility services . . . ." Therefore, any public contract with an estimated value of less than $5,000 entered into by a Minnesota state agency, college, or university for which the Commissioner of Administration did not require a bid had to be awarded to a Minnesota resident under the "Buy Minnesota" law. Minnesota Statutes Annotated Section 16.072 provided that those contracts which required competitive bidding under the "Buy Minnesota" law were required to be "awarded to the resident making the lowest responsible bid if the resident's bid is not more than 10 percent higher than the lowest responsible nonresident bid." A successful resident bidder was prohibited from subcontracting more than 20 percent of the work covered by a contract to nonresident subcontractors. The law also required, where possible, that resident laborers be used to perform all work under the contract.

The "Buy Minnesota" law received harsh criticism from many states bordering Minnesota. In response to the newly enacted "Buy Minnesota" law, Governor Allen I. Olson signed Executive Order 1983-8 on September 1, 1983, thereby directing all state agencies to give preference to North Dakota resident contractors when awarding contracts for "engineering services, erection, construction, alteration, or repair of any public building or structure, for which competitive bidding is not required." The preference required by the Governor's order was that given or required by the state of any nonresident contractor's offer or bid.

The "Buy Minnesota" law was repealed in April 1984 by a bill which also amended other Minnesota bid preference laws. The current Minnesota bid preference law now applies to the advantage of Minnesota contractors on all public construction, repair, and supply contracts but only to the extent that a similar preference is given to a nonresident bidder by that bidder's state of residence. North Dakota has no such requirement for awarding public construction or improvement contracts to resident bidders. However, North Dakota law does give a preference to resident bidders for goods, supplies, merchandise, or equipment contracts. The preference required is that given or required by the state of any nonresident bidder. Therefore, although Minnesota law provides a retaliatory preference to state residents for public construction contracts, that preference would presumably not apply to North Dakota contractors bidding in Minnesota since North Dakota has no such preference available to its resident construction contractors.

Conclusion

The committee was primarily concerned with the mandatory preference for Minnesota resident contractors for those contracts which were not required to be competitively bid and with the Minnesota requirement giving Minnesota resident contractors an automatic 10 percent advantage on all contracts which were competitively bid. Because the "Buy Minnesota" law was repealed, the committee makes no recommendation for legislation in this area.

INSURANCE CODE REVISION COMMITTEE

The Insurance Code Revision Committee was assigned House Concurrent Resolution No. 3001, which directed the completion of the insurance law study and revision started during the 1981-82 interim.

Committee members were Senators Harvey D. Tallackson (Chairman), Donald J. Kilander, Evan E. Lips, Dan Wogsland, and Stanley Wright; and Representatives Dean K. Horgan, Roger A. Koski, and Joseph R. Whalen.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

INSURANCE CODE REVISION EFFORT

The study resolution directed a comprehensive revision and renumbering of the insurance provisions remaining in North Dakota Century Code (NDCC) Title 26, with emphasis on appropriate technical and grammatical changes. The 1981-82 interim committee, which began the insurance law revision, established the following organizational structure for reviewing and recodifying provisions: (1) Commissioner of Insurance; (2) insurance companies; (3) "state" insurance companies; (4) insurance premiums and rates; (5) insurance agents and sales; (6) contracts of insurance; and (7) insurance coverage. That committee studied the provisions relating to the first four study areas and recodified them as NDCC Title 26.1. During this interim, the sections remaining in Title 26, relating to the last three areas of the organizational structure, were reviewed.

INSURANCE CODE REVISION RECOMMENDATION

The committee recommends Senate Bill Nos. 2078 and 2079 — a main Insurance Code Revision bill and a housekeeping Insurance Code Revision bill.

Senate Bill No. 2078 enacts the second part of Title 26.1. It contains the provisions covering insurance agents and sales, contracts of insurance, and insurance coverage, and it repeals the provisions from which it was derived.

Senate Bill No. 2079 makes the changes necessary throughout the North Dakota Century Code if Senate Bill No. 2078 is enacted.

At the end of this report are tables which cross-reference the existing North Dakota Century Code sections and the revised (replacement) sections contained in the bills.

Nonsubstantive Changes

The study resolution directed the revision effort to emphasize technical and grammatical changes. These types of changes made by the committee included updating terms, eliminating duplicative or obsolete provisions, eliminating redundant language, using "shall," "must," and "may" in accordance with proper drafting principles, and neutralizing gender references. General changes made throughout the recodification also included standardizing definitions, providing consistent usage of words and terms, and inserting specific effective dates rather than requiring reference to the session laws.

Included among the nonsubstantive changes was the consolidation of related provisions into chapters dealing with specific subject areas. For example, the policy simplification requirements presently found in a single chapter were separately placed into the chapters pertaining to life insurance, accident and health insurance, and credit life and health insurance.

Substantive Changes

The study resolution directed that the revision effort avoid, to the extent possible, substantive changes. The committee received testimony and recommendations from the Commissioner of Insurance, the Domestic Insurance Companies Organization, the Health Insurance Association of America, the American Council of Life Insurance, the American Insurance Association, and other interested parties. The committee recognized that substantive changes would have to be made to accomplish certain technical revisions. In addition, it was determined that minor, noncontroversial changes would be included within the revision effort.

Included among the substantive changes was a deletion of the insurance policy, contract, and rate schedule approval provisions found throughout NDCC Titles 26 and 26.1 due to the establishment of consolidated approval provisions located in proposed NDCC Chapter 26.1-30. At present, the procedure and time limits for approval vary according to the type of policy. To facilitate the consolidation, a standard procedure and standard time limits were provided. The commissioner was given express authority to disapprove rate schedules rather than relying on the present interpretation of implied authority and a provision was added prohibiting issuance of policies until 30 days from the submission date unless the submittor is notified of approval or the commissioner requests a 15-day extension.

The following table lists the proposed North Dakota Century Code sections that may be considered to contain substantive changes and describes the type of change:

Proposed NDCC Section	Change
26.1-01-03.1	A new provision granting cease and desist authority to the Commissioner of Insurance.
26.-1-01-03.2	A new provision granting injunctive authority to the Commissoner of Insurance.
26.1-26-40	A new provision authorizing the Commissioner of Insurance to refuse to issue a license to first-time insurance license applicants without a prior hearing, but a hearing must be held upon request by the applicant.

26.1-26-42(14)	A new provision allowing the Commissoner of Insurance to suspend, revoke, or refuse to issue or continue a license, for failure to respond to a request for information.
26.1-30-19 through 26.1-30-21	The provisions granting specific authority for the approval of all insurance policies, contracts, agreements, annuities, certificates, and rate schedules, by the Commissioner of Insurance are consolidated and provisions for disapproval or withdrawal of approval, and notice requirements, are added.
26.1-33-02	The Commissioner of Insurance is required to adopt the recent December 9, 1983, rule of the National Association of Insurance Commissioners pertaining to life insurance disclosure instead of the May 4, 1976, rule.
26.1-33-05	The standard policy forms found in existing NDCC Sections 26-03-26 through 26-03-30 are replaced with generalized requirements.
26.1-33-05(2)	The one-month grace period for failure to pay premiums for life insurance policies is changed to parallel the 31-day grace period for group life policies.
26.1-33-32	Specific language is added to allow the Commissioner of Insurance to disapprove a filed policy under the life insurance policy language simplification requirements.
26.-1-34-11	The authorization for variable annuities is inserted as part of the code chapter on annuities, rather than having it as a separate chapter.
26.1-36-04	The standard accident and health policy form is changed to provide generalized requirements; the period of contestability is changed from three years to two years and the grace period in individual, monthly premium policies is changed from not less than 10 days to 15 days, to parallel the provisions required in group policies; a clearer definition of preexisting conditions which are excluded from coverage is provided; and the amount payable to guardians of minors is increased from $1,000 to $5,000.
26.1-36-05	Language providing that subsections 5, 7, and 12 do not apply to credit accident and health policies is added and the provision is made applicable to subscriber agreements issued by nonprofit health service corporations.
26.1-36-05, 26.1-36-06, 26.1-36-10, 26.1-36-20, and 26.1-36-21	The scope of these sections is expanded, making them applicable to subscriber agreements issued by nonprofit health service corporations.
26.1-36-08 and 26.1-36-09	The section pertaining to substance abuse and mental health is split into two separate provisions due to their distinct subject matters and to allow separate amendments to the provisions.
26.1-36-16	Specific language is added to allow the Commissioner of Insurance to disapprove a filed policy under the accident and health policy language simplification requirements.
26.1-36-38 through 26.1-36-40	The rulemaking authority of the Commissioner of Insurance, the penalty provision, and the provision allowing for the validity of nonconforming policies presently found in NDCC Chapter 26-03.1 were made applicable to all of proposed NDCC Chapter 26.1-36. Both the present chapter and the proposed chapter deal with accident and sickness insurance policies, and this change allows the commissioner to uniformly administer these policies.
26.1-37-12	Specific language is added to allow the Commissioner of Insurance to disapprove a filed policy under the credit life insurance and credit accident and health insurance chapter.
26.1-38-01	Insurance policies subject to proposed NDCC Chapter 26.1-42, the Insurance Guaranty Association, are excluded from the application of the Life and Health Insurance Guaranty Association and the chapter is made applicable to persons licensed to transact business in the state at any time.
26.1-38-04	A provision authorizing the Commissioner of Insurance to appoint the original board of directors of the Life and Health Insurance Guaranty Association if not appointed by the insurers is deleted because the original board was appointed by the insurers.

26.1-38-05	The provision authorizing the investment in notes issued by the Life and Health Insurance Guaranty Association is placed into NDCC Section 26.1-05-19, which lists the authorized investments for insurance companies.
26.1-38-08	A reference to the income tax is deleted because insurance companies are subject to premium taxes rather than income taxes.
26-1-38-09	A provision authorizing the Commissioner of Insurance to adopt a plan if the Life and Health Insurance Guaranty Association fails to do so is deleted because a plan was adopted.
26.1-39-08	The obsolete effective date of 1945 is deleted.
26.1-39-18	The authority of the Commissioner of Insurance to impose sanctions is expanded by adding a reference to NDCC Section 26.1-39-17, which prohibits declining or terminating property or casualty policies for specified reasons.
26.1-39-21	The scope of the section is expanded to apply to property and casualty insurance policies, which is the current interpretation of the current equivalent provision by the Commissioner of Insurance.
26.1-39-22	"Fire" is changed to "property" to reflect the interpretation of the provision, dealing with termination of property and casualty insurance agency contracts, by the Commissioner of Insurance.
26.1-40-12	A sanction is provided for failure to give notice of declining an application for a policy by adding a reference to NDCC Section 26.1-40-10.
26.1-40-19	The renewal date for certificates of authority is deleted to allow use of the standard license renewal date under NDCC Section 26.1-02-02, and issuance of a certificate is to be in perpetuity if fees are paid, similar to insurance licenses.
26.1-42-01	Insurance policies subject to proposed NDCC Chapter 26.1-38, the Life and Health Insurance Guaranty Association, are excluded from the application of the Insurance Guaranty Association.
26.1-42-02(4)	The definition of "insolvent insurer" is clarified, standardized use of the definition is provided, and the issuance of a certificate of authority to an insurer is required before being subject to the chapter.
26.1-42-04	The authority of the Commissioner of Insurance to appoint the original members of the board of directors of the Insurance Guaranty Association if not appointed by the insurers is deleted because the original board was appointed by the insurers.
26.1-42-08	The authority of the Commissioner of Insurance to adopt by rule a plan if the Insurance Guaranty Association fails to adopt a plan is deleted because a plan was adopted by the association.
26.1-42-14	The April 30 reporting date is changed to March 1 to comply with annual statement reporting date requirements of insurance companies and the Life and Health Insurance Guaranty Association.

Deleted Provisions

During the study, testimony indicated that several provisions of the insurance laws were unnecessary, duplicative of other provisions, or in conflict with other provisions. The deleted provisions and the rationale for deletions are depicted in the following table:

Section	Rationale for Deletion
26-02-41	A provision providing for prospective application is unnecessary due to judicially applied prospective application.
26-03-26 through 26-03-30	Standard life policy forms are deleted in lieu of generalized policy requirements.
26-03.1-10	This provision, making the Administrative Agencies Practice Act applicable, is unnecessary because NDCC Section 26.1-01-08 makes the Act applicable to administrative actions under Title 26.1.

26-03.1-11	The effective date of July 1, 1953, is outdated.
26-03.5-01	A statement of purpose is unnecessary because the purpose is provided by substantive provisions of the chapter.
26-17.1-45	This provision, making the Administrative Agencies Practice Act applicable, is unnecessary because NDCC Section 26.1-01-08 makes the Act applicable to administrative actions under Title 26.1.
26-18-03	The substance of this provision, relating to insurance on school and township property, was moved to NDCC Chapters 15-29 and 58-06, pertaining to insurance of school and township property.
26-18-09 through 26-18-11	These provisions, relating to fire insurance rating and review, are unnecessary because the subject matter is covered by the prior approval on rating of fire insurance provisions.
26-35-14	This provision, making the Administrative Agencies Practice Act applicable, is unnecessary because NDCC Section 26.1-01-08 makes the Act applicable to administrative actions under Title 26.1.
26-35-16	A separate section providing for the severability of invalid or unconstitutional provisions is unnecessary due to the application of NDCC Section 1-02-20 to the entire code.
26-36-01	A statutory title is unnecessary due to the use of chapter headings in the North Dakota Century Code.
26-36-02	A statement of purpose is unnecessary because the purpose is provided by the substantive provisions of the chapter.
26-41-01	A statutory title is unnecessary due to the use of chapter headings in the North Dakota Century Code.
26-41-02	A statement of purpose is unnecessary because the purpose is provided by the substantive provisions of the chapter.
26.1-17-13, 26.1-17-14, 26.1-17-15, and 26.1-17-17	These provisions, relating to specific coverage which can be provided or must be provided in subscriber agreements issued by nonprofit health service corporations, are similar to proposed NDCC Sections 26.1-36-06, 26.1-36-10, 26.1-36-20, and 26.1-36-21 which pertain to insurance companies. In order to consolidate these similar requirements, the proposed NDCC sections were made applicable to nonprofit health service corporations as well as insurance companies.
26.1-18-15 and 26.1-18-16	These provisions, relating to the disapproval of forms or charges and relating to filings, are covered by the consolidated policy approval provisions ion proposed NDCC Chapter 26.1-30.

CROSS-REFERENCE TABLES FOR REVISED INSURANCE PROVISIONS
TABLE PROVIDING REPLACEMENT SECTION NUMBERS

Present NDCC Section	Replacement NDCC Section
26-02-01	26.1-29-01
26-02-02	26.1-29-02
26-02-03	26.1-29-03
26-02-04	26.1-29-05
26-02-05	26.1-29-06
26-02-06	26.1-29-04
26-02-07	26.1-29-08
26-02-08	26.1-29-07
26-02-09	26.1-29-09
26-02-10	26.1-29-10
26-02-11	26-1-29-11
26-02-12	26.1-29-12
26-02-13	26.1-29-13
26-02-14	26.1-29-14
26-02-15	26.1-29-15
26-02-16	26.1-29-16
26-02-17	26.1-29-17
26-02-18	26.1-29-18
26-02-19	26.1-29-19
26-02-20	26.1-29-20
26-02-21	26.1-29-21
26-02-22	26.1-29-22
26-02-23	26.1-29-23
26-02-24	26.1-29-24
26-02-25	26.1-29-25
26-02-26	26.1-29-26
26-02-27	26.1-29-27
26-02-28	26.1-29-28
26-02-29	26.1-29-31
26-02-30	26.1-29-29
26-02-31	26.1-29-30
26-02-32	26.1-40-01
26-02-33	26.1-40-02
26-02-34	26.1-40-03; 26.1-40-04
26-02-35	26.1-40-04
26-02-36	26.1-40-05
26-02-37	26.1-40-06
26-02-38	26.1-40-07
26-02-38.1	26.1-40-10
26-02-38.2	26.1-40-11
26-02-38.3	26.1-40-12
26-02-39	26.1-40-09
26-02-40	26.1-40-08
26-02-41	Not retained
26-02-42	26.1-40-14
26-02-43	26.1-40-13
26-02-44	26.1-40-15

Present NDCC Section	Replacement NDCC Section
26-02-45	26.1-40-16
26-02-46	26.1-43-01;
	26.1-43-02;
	26.1-43-03
26-02-47	26.1-39-10
26-02-48	26.1-39-11
26-02-49	26.1-39-12
26-02-50	26.1-39-13
26-02-51	26.1-39-13
26-02-52	26.1-39-14
26-02-53	26.1-39-15
26-02-54	26.1-39-16
26-02-55	26.1-39-17
26-02-56	26.1-39-18
26-02-57	26.1-39-19
26-02-58	26.1-39-06
26-02-59	26.1-39-20
26-02-60	26.1-39-21
26-03-01	26.1-30-01
26-03-02	26.1-30-02
26-03-03	26.1-30-03
26-03-04	26.1-30-04
26-03-05	26.1-30-05
26-03-06	26.1-30-06
26-03-07	26.1-30-07
26-03-08	26.1-30-08
26-03-09	26.1-33-39
26-03-10	26.1-30-09
26-03-11	26.1-33-01
26-03-12	26.1-33-33;
	26.1-36-24
26-03-13	26.1-33-34;
	26.1-36-25
26-03-14	26.1-30-10
26-03-15	26.1-30-11
26-03-16	26.1-30-12
26-03-17	26.1-30-13
26-03-18	26.1-30-14
26-03-19	26.1-30-15
26-03-20	26.1-30-16
26-03-21	26.1-30-17
26-03-22	26.1-33-09
26-03-23	26.1-33-38;
	26.1-36-28
26-03-24	26.1-33-37
26-03-25	26.1-33-03
26-03-26	26.1-33-05
26-03-27	26.1-33-05
26-03-28	26.1-33-05
26-03-29	26.1-33-05
26-03-30	26.1-33-05
26-03-31	26.1-33-05
26-03-32	26.1-33-04
26-03-33	Repealed 1977
26-03-34	Repealed 1977
26-03-35	26.1-33-05
26-03-36	26.1-33-06
26-03-37	26.1-33-07
26-03-38	Repealed 1953
26-03-38.1	26.1-36-07
26-03-38.2	26.1-36-07
26-03-38.3	26.1-36-07
26-03-39	Repealed 1953
26-03-39.1	26.1-36-11
26-03-39.2	26.1-36-12
26-03-39.3	26.1-36-30
26-03-39.4	26.1-36-37
26-03-39.5	26.1-36-26
26-03-39.6	26.1-36-27
26-03-40	26.1-39-06
26-03-40.1	26.1-39-08
26-03-41	26.1-39-08
26-03-42	26.1-30-19;
	26.1-30-20
26-03-43	26.1-08-08;
	26.1-30-21;
	28-32-05 et seq.
26-03-44	26.1-33-08
26-03-45	26.1-39-07
26-03-46	26.1-39-07
26-03-47	26.1-39-09
26-03-48	26.1-36-10
26-03-48.1	26.1-36-29
26-03-49	26.1-30-18
26-03.1-01	26.1-36-02
26-03.1-02	26.1-36-03
26-03.1-03	26.1-29-09;
	26.1-36-04;
	26.1-36-38
26-03.1-04	26.1-36-04;
	26.1-36-39
26-03.1-04.1	26.1-36-06
26-03.1-05	26.1-36-17
26-03.1-06	26.1-36-18
26-03.1-07	26.1-36-19
26-03.1-08	26.1-36-01
26-03.1-09	26.1-36-40
26-03.1-10	Not retained
26-03.1-11	Not retained
26-03.1-12	26.1-36-21
26-03.1-13	26.1-36-20
26-03.2-01	26.1-33-18
26-03.2-02	26.1-33-19
26-03.2-03	26.1-33-20
26-03.2-04	26.1-33-21
26-03.2-05	26.1-33-22
26-03.2-06	26.1-33-23
26-03.2-06.1	26.1-33-24
26-03.2-06.2	26.1-33-25
26-03.2-07	26.1-33-26
26-03.2-07.1	26.1-33-27
26-03.2-08	26.1-33-28
26-03.3-01	26.1-34-01
26-03.3-02	26.1-34-02
26-03.3-03	26.1-34-03
26-03.3-04	26.1-34-04
26-03.3-05	26.1-34-05
26-03.3-06	26.1-34-06
26-03.3-07	26.1-34-07
26-03.3-08	26.1-34-08
26-03.3-09	26.1-34-09
26-03.3-10	26.1-34-10
26-03.4-01	26.1-36-31
26-03.4-02	26.1-36-32
26-03.4-03	26.1-36-33
26-03.4-04	26.1-36-34
26-03.4-05	26.1-36-35
26-03.4-06	26.1-36-36
26-03.5-01	Not retained
26-03.5-02	26.1-33-29;
	26.1-33-30;
	26.1-36-13;
	26.1-36-14;
	26.1-37-09
26-03.5-03	26.1-33-29;
	26.1-36-13;
	26.1-37-09
26-03.5-04	26.1-33-30;
	26.1-36-14;
	26.1-37-10
26-03.5-05	26.1-33-32;
	26.1-36-16;
	26.1-37-12
26-03.5-06	26.1-33-30;
	26.1-36-14;
	26.1-37-10
26-03.5-07	26.1-33-31;
	26.1-36-15;
	26.1-37-11
26-03.5-08	26.1-33-29;
	26.1-36-13;
	26.1-37-09
26-03.6-01	26.1-33-11
26-03.6-02	26.1-33-12
26-03.6-03	26.1-36-05
26-03.6-04	26.1-36-22
26-03.6-05	26.1-36-23
26-05-01	26.1-31-01
26-05-02	26.1-31-02
26-05-03	Repealed 1983
26-05-04	26.1-31-03
26-05-05	26.1-31-04
26-05-06	26.1-31-05
26-05-07	26.1-31-06
26-05-08	26.1-31-07
26-06-01	26.1-32-01
26-06-02	26.1-32-02
26-06-03	26.1-32-03
26-06-04	26.1-32-04
26-06-05	26.1-32-05
26-06-06	26.1-32-06
26-06-07	26.1-32-07
26-06-08	26.1-32-08
26-06-09	26.1-32-09
26-06-10	26.1-32-10
26-06-11	Repealed 1975
26-06-12	Repealed 1975
26-09.2-01	26.1-01-01;
	26.1-44-02
26-09.2-02	26.1-26-36
26-09.2-03	Repealed 1975
26-09.2-04	26.1-44-02
26-09.2-05	26.1-44-05
26-09.2-06	26.1-44-04
26-09.2-07	26.1-44-06
26-09.2-08	26.1-44-01
26-09.2-09	26.1-44-07
26-09.2-10	26.1-44-08
26-09.2-11	26.1-44-03
26-09.2-12	26.1-26-36
26-09.2-13	26.1-44-09
26-10-01	Repealed 1977
26-10-02	Repealed 1983
26-10-03	Repealed 1983
26-10-04	Repealed 1983
26-10-05	Repealed 1983
26-10-06	Repealed 1977
26-10-07	26.1-33-10
26-10-08	Repealed 1975
26-10-08.1	26.1-01-08;
	26.1-33-02
26-10-09	Repealed 1983
26-10-10	Repealed 1983
26-10-11	Repealed 1983

Present NDCC Section	Replacement NDCC Section
26-10-12	Repealed 1975
26-10-13	Repealed 1967
26-10-13.1	Repealed 1983
26-10-14	Repealed 1983
26-10-15	Repealed 1983
26-10-16	Repealed 1983
26-10-17	26.1-33-36
26-10-18	26.1-33-40
26-10-19	26.1-33-35
26-10-20	26.1-33-41
26-10-21	26.1-33-42
26-10-22	26.1-33-42
26-10-23	26.1-33-42
26-10-24	26.1-33-42
26-10-25	26.1-33-42
26-10-26	26.1-33-43
26-10.1-01	26.1-35-01
26-10.1-02	26.1-35-02
26-10.1-03	26.1-35-03
26-10.1-03.1	26.1-35-04
26-10.1-04	26.1-35-05
26-10.1-05	26.1-35-06
26-10.1-06	26.1-35-07
26-10.1-07	26.1-35-08
26-10.1-08	26.1-35-09
26-10.1-09	26.1-35-10
26-11.1-01	26.1-33-13; 26.1-34-11
26-11.1-02	26.1-33-15; 26.1-34-11
26-11.1-03	26.1-33-14; 26.1-34-11
26-11.1-04	26.1-33-17; 26.1-34-11
26-11.1-05	26.1-33-16; 26.1-34-11
26-17.1-01	26.1-26-01; 26.1-26-02
26-17.1-02	26.1-26-02; 26.1-44-02
26-17.1-03	26.1-26-05
26-17.1-04	26.1-26-06
26-17.1-05	26.1-26-07
26-17.1-06	26.1-26-03
26-17.1-07	26.1-26-11
26-17.1-08	26.1-26-25
26-17.1-09	26.1-26-08
26-17.1-10	26.1-26-38
26-17.1-11	26.1-26-04
26-17.1-12	26.1-26-13; 26.1-26-30
26-17.1-13	26.1-26-31
26-17.1-13.1	26.1-26-08; 26.1-26-32
26-17.1-14	26.1-26-09
26-17.1-15	26.1-26-12; 26.1-26-13
26-17.1-16	26.1-26-12; 26.1-26-32
26.17.1-17	26.1-26-18
26-17.1-18	26.1-26-16
26-17.1-19	26.1-26-17
26-17.1-20	26.1-26-19
26-17.1-21	26.1-26-20
26-17.1-22	26.1-26-21
26-17.1-23	26.1-26-22
26-17.1-24	26.1-26-45
26-17.1-25	26.1-26-25
26-17.1-26	26.1-26-15
26-17.1-27	26.1-26-47
26-17.1-28	26.1-26-23; 26.1-26-28
26-17.1-29	26.1-26-24
26-17.1-30	26.1-26-27
26-17.1-31	26.1-26-28
26-17.1-32	26.1-26-29
26-17.1-33	26.1-26-39
26-17.1-34	26.1-26-33
26-17.1-35	26.1-26-25
26-17.1-36	26.1-26-03; 26.1-26-10
26-17.1-37	26.1-26-12; 26.1-26-14; 26.1-26-23
26-17.1-38	26.1-26-35
26-17.1-39	26.1-26-41
26-17.1-40	26.1-26-41
26-17.1-41	26.1-26-31; 26.1-26-32; 26.1-26-35; 26.1-26-39; 26.1-26-42
26-17.1-42	26.1-26-42
26-17.1-43	26.1-26-43
26-17.1-44	26.1-26-50
26-17.1-45	Not retained, see 26.1-01-08
26-17.1-46	26.1-26-44
26-17.1-47	26.1-26-33; 26.1-26-46
26-17.1-48	26.1-26-37
26-17.1-49	26.1-26-34
26-17.1-50	Repealed 1983
26-17.1-51	Repealed 1983
26-17.1-52	Repealed 1983
26-17.1-53	Repealed 1983
26-17.1-54	26.1-26-26
26-17.1-55	26.1-26-49
26-17.1-56	26.1-26-48
26-17.2-01	26.1-27-01
26-17.2-01.1	26.1-27-02
26-17.2-02	26.1-27-05; 26.1-27-06
26-17.2-03	26.1-27-09
26-17.2-04	26.1-27-12
26-17.2-05	26.1-27-06
26-17.2-06	26.1-27-06
26-17.2-07	26.1-27-06; 26.1-27-08
26-17.2-08	26.1-27-10
26-17.2-09	26.1-27-11
26-17.2-10	26.1-27-07
26-17.2-11	26.1-27-03
26-17.2-12	26.1-27-04
26-18-01	Repealed 1983
26-18-02	Repealed 1983
26-18-03	15-29-08; 58-06-01
26-18-04	26.1-39-01
26-18-05	26.1-39-02
26-18-06	26.1-39-03
26-18-07	26.1-39-04
26-18-08	26.1-39-05
26-18-09	Not retained
26-18-10	Not retained
26-18-11	Not retained
26-18-12	Repealed 1983
26-18-13	26.1-39-22
26-31-01	26.1-40-18
26-31-02	26.1-02-02; 26.1-40-19
26-31-03	26.1-40-20
26-31-04	26.1-30-19
26-31-05	26.1-01-08; 26.1-40-21
26-31-06	26.1-40-22
26-33-01	26.1-28-01
26-33-02	26.1-28-02
26-33-03	26.1-28-03
26-33-04	26.1-28-04
26-33-05	26.1-28-05
26-34-01	26.1-40-17
26-34-02	26.1-40-17
26-35-01	26.1-37-01
26-35.02	26.1-37-01
26-35-03	26.1-37-02
26-35-04	26.1-37-04
26-35-05	26.1-37-05
26-35-06	26.1-37-06
26-35-07	26.1-37-07
26-35-08	26.1-30-19; 26.1-30-20; 26.1-30-21
26-35-09	26.1-30-19; 26.1-37-08
26-35-10	26.1-37-03
26-35-11	26.1-37-13
26-35-12	26.1-37-14
26-35-13	26.1-37-15
26-35-14	Not retained, see 26.1-01-08
26-35-15	26.1-37-16
26-35-16	Not retained, see 1-02-20
26-36-01	Not retained
26-36-02	Not retained
26-36-03	26.1-42-01
26-36-04	26.1-42-01
26-36-05	26.1-42-02
26-36-06	26.1-42-03
26-36-07	26.1-42-04
26-36-08	26.1-42-05
26-36-09	26.1-42-08
26-36-10	26.1-42-09
26-36-11	26.1-42-11
26-36-12	26.1-42-12
26-36-13	26.1-42-10
26-36-14	26.1-42-14
26-36-15	26.1-42-06
26-36-16	26.1-42-07
26-36-17	26.1-42-15
26-36-18	26.1-42-13
26-36.1-01	26.1-38-01
26-36.1-02	26.1-38-02
26-36.1-03	26.1-38-03
26-36.1-04	26.1-38-04
26-36.1-05	26.1-05-19; 26.1-38-05
26-36.1-06	26.1-38-06
26-36.1-07	26.1-38-09
26-36.1-08	26.1-38-10
26-36.1-09	26.1-38-11
26-36.1-10	26.1-38-08
26-36.1-11	26.1-38-12

Present NDCC Section	Replacement NDCC Section
26-36.1-12	26.1-38-15
26-36.1-13	26.1-38-07
26-36.1-14	26.1-38-16
26-36.1-15	26.1-38-13
26-36.1-16	26.1-38-14
26-39-01	26.1-36-08; 26.1-36-09
26-39-02	26.1-36-08; 26.1-36-09
26-39-03	26.1-36-08; 26.1-36-09
26-39-04	26.1-36-08; 26.1-36-09
26-39-05	26.1-36-08; 26.1-36-09
26-41-01	Not retained
26-41-02	Not retained
26-41-03	26.1-41-01
26-41-04	26.1-41-02
26-41-04.1	26.1-41-03
26-41-05	26.1-41-05
26-41-06	26.1-41-04
26-41-07	26.1-41-06
26-41-08	26.1-41-07
26-41-09	26.1-41-09
26-41-10	26.1-41-13
26-41-10.1	26.1-41-14
26-41-11	26.1-41-15
26-41-12	26.1-41-08
26-41-13	26.1-41-16
26-41-14	26.1-41-17
26-41-15	26.1-41-10
26-41-16	26.1-41-19
26-41-17	26.1-41-11
26-41-18	26.1-41-12
26-41-19	26.1-41-18
26.1-17-13	26.1-36-06
26.1-17-14	26.1-36-21
26.1-17-15	26.1-36-20
26.1-17-17	26.1-36-10

TABLE PROVIDING SECTION NUMBERS

Replacement NDCC Section	Present NDCC Section
15-29-08	26-18-03
26.1-01-03.1	None
26.1-01-03.2	None
26.1-05-19	26-36.1-05
26.1-26-01	26-17.1-01
26.1-26-02	26-17.1-01; 26-17.1-02
26.1-26-03	26-17.1-06; 26-17.1-36
26.1-26-04	26-17.1-11
26.1-26-05	26-17.1-03
26.1-26-06	26-17.1-04
26.1-26-07	26-17.1-05
26.1-26-08	26-17.1-09; 26-17.1-13.1
26.1-26-09	26-17.1-14
26.1-26-10	26-17.1-36
26.1-26-11	26-17.1-07
26.1-26-12	26-17.1-15; 26-17.1-16; 26-17.1-37
26.1-26-13	26-17.1-12; 26-17.1-15
26.1-26-14	26-17.1-37
26.1-26-15	26-17.1-26
26.1-26-16	26-17.1-18
26.1-26-17	26-17.1-19
26.1-26-18	26-17.1-17
26.1-26-19	26-17.1-20
26.1-26-20	26-17.1-21
26.1-26-21	26-17.1-22
26.1-26-22	26-17.1-23
26.1-26-23	26-17.1-28; 26-17.1-37
26.1-26-24	26-17.1-29
26.1-26-25	26-17.1-08; 26-17.1-25; 26-17.1-35
26.1-26-26	26-17.1-54
26.1-26-27	26-17.1-30
26.1-26-28	26-17.1-28; 26-17.1-31
26.1-26-29	26-17.1-32
26.1-26-30	26-17.1-12
26.1-26-31	26-17.1-13; 26-17.1-32; 26-17.1-41
26.1-26-32	26-17.1-13.1; 26-17.1-16; 26-17.1-41
26.1-26-33	26-17.1-34; 26-17.1-47
26.1-26-34	26-17.1-49
26.1-26-35	26-17.1-38; 26-17.1-41
26.1-26-36	26.09.2-02; 26-09.2-12
26.1-26-37	26-17.1-48
26.1-26-38	26-17.1-10
26.1-26-39	26-17.1-33; 26-17.1-41
26.1-26-40	None
26.1-26-41	26-17.1-39; 26-17.1-40
26.1-26-42	26-17.1-41; 26-17.1-42
26.1-26-43	26-17.1-43
26.1-26-44	26-17.1-46
26.1-26-45	26-17.1-24
26.1-26-46	26-17.1-47
26.1-26-47	26-17.1-27
26.1-26-48	26-17.1-56
26.1-26-49	26-17.1-55
26.1-26-50	26-17.1-44
26.1-27-01	26-17.2-01
26.1-27-02	26-17.2-01.1
26.1-27-03	26-17.2-11
26.1-27-04	26-17.2-12
26.1-27-05	26-17.2-02
26.1-27-06	26-17.2-02; 26-17.2-05; 26-17.2-06; 26-17.2-07
26.1-27-07	26-17.2-10
26.1-27-08	26-17.2-07
26.1-27-09	26-17.2-03
26.1-27-10	26-17.2-08
26.1-27-11	26-17.2-09
26.1-27-12	26-17.2-04
26.1-28-01	26-33-01
26.1-28-02	26-33-02
26.1-28-03	26-33-03
26.1-28-04	26-33-04
26.1-28-05	26-33-05
26.1-29-01	26-02-01
26.1-29-02	26-02-02
26.1-29-03	26-02-03
26.1-29-04	26-02-06
26.1-29-05	26-02-04
26.1-29-06	26-02-05
26.1-29-07	26-02-08
26.1-29-08	26-02-07
26.1-29-09	26-02-09
26.1-29-10	26-02-10
26.1-29-11	26-02-11
26.1-29-12	26-02-12
26.1-29-13	26-02-13
26.1-29-14	26-02-14
26.1-29-15	26-02-15
26.1-29-16	26-02-16
26.1-29-17	26-02-17
26.1-29-18	26-02-18
26.1-29-19	26-02-19
26.1-29-20	26-02-20
26.1-29-21	26-02-21
26.1-29-22	26-02-22
26.1-29-23	26-02-23
26.1-29-24	26-02-24
26.1-29-25	26-02-25
26.1-29-26	26-02-26
26.1-29-27	26-02-27
26.1-29-28	26-02-28
26.1-29-29	26-02-30
26.1-29-30	26-02-31
26.1-29-31	26-02-29
26.1-30-01	26-03-01

Replacement NDCC Section	Present NDCC Section
26.1-30-02	26-03-02
26.1-30-03	26-03-03
26.1-30-04	26-03-04
26.1-30-05	26-03-05
26.1-30-06	26-03-06
26.1-30-07	26-03-07
26.1-30-08	26-03-08
26.1-30-09	26-03-10
26.1-30-10	26-03-14
26.1-30-11	26-03-15
26.1-30-12	26-03-16
26.1-30-13	26-03-17
26.1-30-14	26-03-18
26.1-30-15	26-03-19
26.1-30-16	26-03-20
26.1-30-17	26-03-21
26.1-30-18	26-03-49
26.1-30-19	26-03-42;
	26-31-04;
	26-35-08;
	26-35-09
26.1-30-20	26-03-42;
	26-35-08
26.1-30-21	26-03-43;
	26-35-08
26.1-31-01	26-05-01
26.1-31-02	26-05-02
26.1-31-03	26-05-04
26.1-31-04	26-05-05
26.1-31-05	26-05-06
26.1-31-06	26-05-07
26.1-31-07	26-05-08
26.1-32-01	26-06-01
26.1-32-02	26-06-02
26.1-32-03	26-06-03
26.1-32-04	26-06-04
26.1-32-05	26-06-05
26.1-32-06	26-06-06
26.1-32-07	26-06-07
26.1-32-08	26-06-08
26.1-32-09	26-06-09
26.1-32-10	26-06-10
26.1-33-01	26-03-11
26.1-33-02	26-10-08.1
26.1-33-03	26-03-25
26.1-33-04	26-03-32
26.1-33-05	26-03-26;
	26-03-27;
	26-03-28;
	26-03-29;
	26-03-30;
	26-03-31;
	26-03-35
26.1-33-06	26-03-36
26.1-33-07	26-03-37
26.1-33-08	26-03-44
26.1-33-09	26-03-22
26.1-33-10	26-10-07
26.1-33-11	26-03.6-01
26.1-33-12	26-03.6-02
26.1-33-13	26-11.1-01
26.1-33-14	26-11.1-03
26.1-33-15	26-11.1-02
26.1-33-16	26-11.1-05
26.1-33-17	26-11.1-04
26.1-33-18	26-03.2-01
26.1-33-19	26-03.2-02
26.1-33-20	26-03.2.03
26.1-33-21	26-03.2-04
26.1-33-22	26-03.2-05
26.1-33-23	26-03.2-06
26.1-33-24	26-03.2-06.1
26.1-33-25	26-03.2-06.2
26.1-33-26	26-03.2-07
26.1-33-27	26-03.2-07.1
26.1-33-28	26-03.2-08
26.1-33-29	26-03.5-02;
	26-03.5-03;
	26-03.5-08
26.1-33-30	26-03.5-02;
	26-03.5-04;
	26-03.5-06
26.1-33-31	26-03.5-07
26.1-33-32	26-03.5-05
26.1-33-33	26-03-12
26.1-33-34	26-03-13
26.1-33-35	26-10-19
26.1-33-36	26-10-17
26.1-33-37	26-03-24
26.1-33-38	26-03-23
26.1-33-39	26-03-09
26.1-33-40	26-10-18
26.1-33-41	26-10-20
26.1-33-42	26-10-21;
	26-10-22;
	26-10-23;
	26-10-24;
	26-10-25
26.1-33-43	26-10-26
26.1-34-01	26-03.3-01
26.1-34-02	26-03.3-02
26.1-34-03	26-03.3-03
26.1-34-04	26-03.3-04
26.1-34-05	26-03.3-05
26.1-34-06	26-03.3-06
26.1-34-07	26-03.3-07
26.1-34-08	26-03.3-08
26.1-34-09	26-03.3-09
26.1-34-10	26-03.3-10
26.1-34-11	26-11.1-01;
	26-11.1-02;
	26-11.1-03;
	26-11.1-04;
	26-11.1-05
26.1-35-01	26-10.1-01
26.1-35-02	26-10.1-02
26.1-35-03	26-10.1-03
26.1-35-04	26-10.1-03.1
26.1-35-05	26-10.1-04
26.1-35-06	26-10.1-05
26.1-35-07	26-10.1-06
26.1-35-08	26-10.1-07
26.1-35-09	26-10.1-08
26.1-35-10	26-10.1-09
26.1-36-01	26-03.1-08
26.1-36-02	26-03.1-01
26.1-36-03	26-03.1-02
26.1-36-04	26-03.1-03;
	26-03.1-04
26.1-36-05	26-03.6-03
26.1-36-06	26-03.1-04.1;
	26.1-17-13
26.1-36-07	26-03-38.1;
	26-03-38.2;
	26-03-38.3
26.1-36-08	26-39-01;
	26-39-02;
	26-39-03;
	26-39-04;
	26-39-05
26.1-36-09	26-39-01;
	26-39-02;
	26-39-03;
	26-39-04;
	26-39-05
26.1-36-10	26-03-48;
	26.1-17-17
26.1-36-11	26-03-39.1
26.1-36-12	26-03-39.2
26.1-36-13	26-03.5-02;
	26-03.5-03;
	26-03.5-08
26.1-36-14	26-03.5-02;
	26-03.5-04;
	26-03.5-06
26.1-36-15	26-03.5-07
26.1-36-16	26-03.5-05
26.1-36-17	26-03.1-05
26.1-36-18	26-03.1-06
26.1-36-19	26-03.1-07
26.1-36-20	26-03.1-13;
	26.1-17-15
26.1-36-21	26-03.1-12;
	26.1-17-14
26.1-36-22	26-03.6-04
26.1-36-23	26-03.6-05
26.1-36-24	26-03-12
26.1-36-25	26-03-13
26.1-36-26	26-03-39.5
26.1-36-27	26-03-39.6
26.1-36-28	26-03-23
26.1-36-29	26-03-48.1
26.1-36-30	26-03-39.3
26.1-36-31	26-03.4-01
26.1-36-32	26-03.4-02
26.1-36-33	26-03.4-03
26.1-36-34	26-03.4-04
26.1-36-35	26-03.4-05
26.1-36-36	26-03.4-06
26.1-36-37	26-03-39.4
26.1-36-38	26-03.1-03
26.1-36-39	26-03.1-04
26.1-36-40	26-03.1-09
26.1-37-01	26-35-01;
	26-35-02
26.1-37-02	26-35-03
26.1-37-03	26-35-10
26.1-37-04	26-35-04
26.1-37-05	26-35-05
26.1-37-06	26-35-06
26.1-37-07	26-35-07
26.1-37-08	26-35-09
26.1-37-09	26-03.5-02;
	26-03.5-03;
	26-03.5-08
26.1-37-10	26-03.5-04;
	26-03.5-06
26.1-37-11	26-03.5-07
26.1-37-12	26-03.5-05
26.1-37-13	26-35-11
26.1-37-14	26-35-12
26.1-37-15	26-35-13
26.1-37-16	26-35-15

Replacement NDCC Section	Present NDCC Section
26.1-38-01	26-36.1-01
26.1-38-02	26-36.1-02
26.1-38-03	26-36.1-03
26.1-38-04	26-36.1-04
26.1-38-05	26-36.1-05
26.1-38-06	26-36.1-06
26.1-38-07	26-36.1-13
26.1-38-08	26-36.1-10
26.1-38-09	26-36.1-07
26.1-38-10	26-36.1-08
26.1-38-11	26-36.1-09
26.1-38-12	26-36.1-11
26.1-38-13	26-36.1-15
26.1-38-14	26-36.1-16
26.1-38-15	26-36.1-12
26.1-38-16	26-36.1-14
26.1-39-01	26-18-04
26.1-39-02	26-18-05
26.1-39-03	26-18-06
26.1-39-04	26-18-07
26.1-39-05	26-18-08
26.1-39-06	26-02-58; 26-03-40
26.1-39-07	26-03-45; 26-03-46
26.1-39-08	26-03-40.1; 26-03-41
26.1-39-09	26-03-47
26.1-39-10	26-02-47
26.1-39-11	26-02-48
26.1-39-12	26-02-49
26.1-39-13	26-02-50; 26-02-51
26.1-39-14	26-02-52
26.1-39-15	26-02-53
26.1-39-16	26-02-54
26.1-39-17	26-02-55
26.1-39-18	26-02-56
26.1-39-19	26-02-57
26.1-39-20	26-02-59
26.1-39-21	26-02-60
26.1-39-22	26-18-13
26.1-40-01	26-02-32
26.1-40-02	26-02-33
26.1-40-03	26-02-34
26.1-40-04	26-02-34; 26-02-35
26.1-40-05	26-02-36
26.1-40-06	26-02-37
26.1-40-07	26-02-38
26.1-40-08	26-02-40
26.1-40-09	26-02-39
26.1-40-10	26-02-38.1
26.1-40-11	26-02-38.2
26.1-40-12	26-02-38.3
26.1-40-13	26-02-43
26.1-40-14	26-02-42
26.1-40-15	26-02-44
26.1-40-16	26-02-45
26.1-40-17	26-34-01; 26-34-02
26.1-40-18	26-31-01
26.1-40-19	26-31-02
26.1-40-20	26-31-03
26.1-40-21	26-31-05
26.1-40-22	26-31-06
26.1-41-01	26-41-03
26.1-41-02	26-41-04
26.1-41-03	26-41-04.1
26.1-41-04	26-41-06
26.1-41-05	26-41-05
26.1-41-06	26-41-07
26.1-41-07	26-41-08
26.1-41-08	26-41-12
26.1-41-09	26-41-09
26.1-41-10	26-41-15
26.1-41-11	26-41-17
26.1-41-12	26-41-18
26.1-41-13	26-41-10
26.1-41-14	26-41-10.1
26.1-41-15	26-41-11
26.1-41-16	26-41-13
26.1-41-17	26-41-14
26.1-41-18	26-41-19
26.1-41-19	26-41-16
26.1-42-01	26-36-03; 26-36-04
26.1-42-02	26-36-05
26.1-42-03	26-36-06
26.1-42-04	26-36-07
26.1-42-05	26-36-08
26.1-42-06	26-36-15
26.1-42-07	26-36-16
26.1-42-08	26-36-09
26.1-42-09	26-36-10
26.1-42-10	26-36-13
26.1-42-11	26-36-11
26.1-42-12	26-36-12
26.1-42-13	26-36-18
26.1-42-14	26-36-14
26.1-42-15	26-36-17
26.1-43-01	26-02-46
26.1-43-02	26-02-46
26.1-43-03	26-02-46
26.1-44-01	26-09.2-08
26.1-44-02	26-09.2-01; 26-09.2-04; 26-17.1-02
26.1-44-03	26-09.2-11
26.1-44-04	26-09.2-06
26.1-44-05	26-09.2-05
26.1-44-06	26-09.2-07
26.1-44-07	26-09.2-09
26.1-44-08	26-09.2-10
26.1-44-09	26-09.2-13
58-06-01	26-18-03

JUDICIARY "A" COMMITTEE

The Judiciary "A" Committee was assigned three study resolutions. House Concurrent Resolution No. 3100 directed a study of the ownership or leasing of farm or ranch land by nonprofit corporations or trusts, with emphasis on the beneficial aspects of such ownership or leasing. House Concurrent Resolution No. 3079 directed a study of the abandonment of railroad branchlines, and especially the possibility of forfeiture of mineral interests on land grant holdings in the event of abandonment. Finally, House Concurrent Resolution No. 3094 directed a study of the feasibility and desirability of establishing a fund for loans to farmers funded privately by earnings from mineral royalties, with emphasis on income tax incentives on state and federal level.

Committee members were Representatives Pat Conmy (Chairman), Charles C. Anderson, Jim Brokaw, Steve Hughes, David W. Kent, Bruce W. Larson, Walter A. Meyer, John M. Riley, John T. Schneider, Larry W. Schoenwald, Dean A. Vig, and Gene Watne; and Senators F. Kent Vosper and Dan Wogsland. Senator Francis Barth served on the committee until his death in April 1984.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. After amendment, the report was adopted for submission to the 49th Legislative Assembly.

CORPORATE FARMING STUDY

Background

North Dakota's general prohibition of corporate farming had its genesis in a 1932 initiated measure which essentially prohibited all forms of corporate farming. The corporate farming provisions are codified in North Dakota Century Code (NDCC) Chapter 10-06. Although some changes were made to the corporate farming statutes in recent sessions, the fundamental concept of prohibiting corporate farming has remained. The exemptions center primarily around allowing incorporation of family farms to take advantage of tax laws, and allowing a limited class of charitable corporations to farm.

A fundamental reason for the corporate farming law is the widely held belief that family farming is an important part of the character of this state. Because corporations have perpetual existence and the ability, by issuing stock, to amass wealth from many sources, corporations have an inherent advantage in competing with family farmers in acquiring farmland. Keeping in mind the fundamental concept that family farming should be preserved, yet that worthwhile charitable enterprises should be encouraged, that necessary industrial use of land be permitted, and that temporary ownership of land by artificial legal entities (such as trusts) is frequently necessary to effect a transfer of ownership in land, the committee gave close scrutiny to the entire corporate farming issue.

Charitable Use Exemption

The original initiated measure made no provision for allowing nonprofit organizations or trusts to own farmland. This effectively prohibited the operation of farmland by a myriad of worthwhile incorporated charities. Many charities continued ownership of farmland despite the prohibition. However, apparently no action was ever taken to force such charities to divest themselves of the land.

Section 501(c)(3) Status. In 1983 the creation of NDCC Section 10-06-04.1 for the first time provided authority for certain incorporated charitable organizations to own farmland. The 1983 change allowed ownership of farmland by charities with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and by trusts for the benefit of individuals who would be qualified to own a family farm. The reference to Section 501(c)(3) of the Internal Revenue Code effectively means that the only charities allowed to own farmland are those to which tax deductible donations can be made by taxpayers. There are many other kinds of nonprofit organizations recognized in the Internal Revenue Code, for which donations are not tax deductible, and therefore are not allowed to own farmland. Among these are lodges, fraternal organizations, and recreation clubs.

Accordingly, the committee directed its study toward whether the Section 501(c)(3) definition should be used, whether the definition should be restricted somewhat, and whether other kinds of charities should be allowed to own farmland. There was some discussion as to whether reference should be made to the Internal Revenue Code section or rather to the substantive characteristics of charities intended to qualify under the provision. The chief advantage of the direct reference to the Internal Revenue Code section is that the state would not be required to make an independent determination as to qualifications of the charity, as each charity exempt under Section 501(c)(3) has a certificate from the Internal Revenue Service as to that status. Proponents of using the substantive provision expressed concern over the wisdom of referring to the Internal Revenue Code, over which the state has no control.

Other Charities. The committee heard considerable testimony on the nature of other charities that should be allowed to own farmland. Proponents of widening the exemption argued that many parcels of farmland had been donated to worthy organizations, such as lodges, which were ineligible to own the land. It was pointed out that these parcels of land provided valuable income to the lodges both for the lodges' own operations and for their charitable donations. Opponents of broadening the exemption argued that these donations had always been illegal, and it would be inappropriate to ratify improper donations.

The committee considered a bill draft that would have allowed the following nonprofit tax-exempt organizations to own farmland: title holding corporations holding title for tax-exempt charities, social or recreation clubs, fraternal organizations, cemetery companies, certain private foundations or public charities, and certain tax-exempt trusts. Allowing these organizations to own farmland would be an extension of the present exemptions.

The committee heard considerable testimony as to the good works and beneficial impact resulting from the efforts of these charities. Among these are the Dakota Boys Ranch, Assumption Abbey, and the Cross Ranch. Because activities such as these are beneficial to the quality of life in North Dakota, the committee believes these activities should be encour-

aged and an exemption from the corporate farming prohibition be allowed to support these activities.

However, the case is not as compelling for certain other nonprofit organizations the committee was considering. Among these are the title holding corporations, social or recreation clubs, fraternal organizations, and cemetery companies. The committee believes no exemption should be allowed for these kinds of organizations.

Hunting Preserves. One concern expressed to the committee was that some organizations holding land for scenic preservation purposes could effectively convert the land to a private hunting preserve open only to the organization's members and contributors. The committee was also mindful that many such organizations may desire to restrict all hunting. Accordingly, the committee determined that a fair compromise would be to require such organizations either to prohibit all hunting or to allow hunting by the general public.

Proprietary Charities. Some discussion was given to the issue of private profitmaking organizations holding land for charitable purposes. By definition such an organization would not qualify for tax-exempt status. The committee realized it would be impossible to distinguish adequately profit-oriented organizations holding farmland for legitimate charitable purposes from those holding for speculation or other attempts at subverting the general policy goal of promoting family farms. Because such activities and worthy goals can be accomplished by acquiring federal tax-exempt status, the committee believes no exemption should be allowed for taxable organizations.

Land Essential to Charitable Mission. Concern was expressed that charities might themselves engage in land speculation. Since exemption from the corporate farming law is in derogation of the general principle that family farming should be encouraged, the committee believes the exemptions should be narrowly drawn. The committee believes a charity should own farmland only to the extent the land is essential for the charitable mission. A charity which holds land which becomes no longer necessary for that mission should be required to divest itself of the land.

Family Farm Corporations

Reasons for Incorporation. The 1932 initiated measure was comprehensive in its prohibition of corporate farming. The only exemption allowed was for cooperatives in which 75 percent of the shareholders were active farmers. However, in recent years many owners of small businesses have found it desirous to incorporate for various legal and tax advantages. The primary legal advantage of forming a corporation is limitation of liability of the shareholders. Subchapter S of the Internal Revenue Code eliminates the primary tax disadvantage of forming a corporation, namely double taxation of the corporation's income and its dividends distributed to shareholders. As a result, many owners of family farms desire to form corporations to operate the farm. In 1981 the first provisions were added to the Century Code allowing family farm corporations. Since the first allowance of family farm corporations, a few minor difficulties have arisen which the committee believes should be addressed.

Passive Income Limitation. Under NDCC Section 10-06-07(7), a family farm corporation's income from rent, royalties, dividends, and annuities cannot exceed 20 percent of the corporation's gross receipts. The committee heard considerable testimony that this imposed a substantial burden on farms going through the process of changes of ownership or other liquidation, often resulting from death of one or more of the shareholders.

Many farmers, at retirement, rent out the land yet retain the corporate structure. This often means the corporation ends up violating the 20 percent limitation of Section 10-06-07(7). However, the committee did not believe it advisable to repeal the limit entirely as that would give rise to corporations having substantial passive income and for which farming would only be a small part of the corporation's economic activities. A compromise proposed to the committee was that the 20 percent limitation apply only to nonfarm rent and royalties and to all dividends, interest, and annuities. This would effectively place no limit on the proportion of income derived from renting the farmland or from royalties.

It was also suggested that the 20 percent be measured against gross income rather than gross receipts. Measurement against gross income would exclude from the computation receipts which, under the Internal Revenue Code, are not considered "gross income." Common examples of items which are "receipts" in the economic sense but are not "gross income" include like-kind exchanges of property (e.g., tractor for tractor), borrowed money, and municipal bond interest.

Shareholder Relationships. It was also pointed out to the committee that the provision in Section 10-06-07(2) concerning eligible shareholders in a family farm corporation is not clear, and that, when a shareholder dies, it is not clear whether the deceased shareholder's heirs must be related to all the other shareholders in the same relation as the decedent, or if the heir need have that relationship to just one shareholder. The committee believes it was the intent of the original proposal allowing family farm corporations to require that the necessary familial relationship be maintained among all shareholders, including those receiving from deceased shareholders.

Definition of "Child". Another technical problem pointed out to the committee was the use of the word "child" in defining eligible shareholders in a family farm corporation. Under Section 10-06-07(2) qualifying shareholders must be related to each other within specified degrees of affinity or kinship. One of the relationships specified is that of parent and child. In the provision, the word "child" is used.

However, the committee was advised that the Attorney General's office had given the Secretary of State's office an informal opinion that the use of the word "child" restricted qualifying fellow shareholders to a child under the age of 18. This was because of the definition of "child" in Section 14-10-01 which defines a child as a person under the age of 18. Since the Secretary of State's office has the responsibility of issuing certificates of incorporation, that office was in doubt as to whether it had the power to issue a certificate of corporation if some of the shareholders were adult children of other shareholders. The committee believes it was clearly the intent of the original proposal to allow adult children to be shareholders in a family corporate farm.

Industrial Use Exception

In 1983 the Legislative Assembly passed a temporary provision allowing an industrial business

purpose exception to the general corporate farm prohibition. Under Chapter 131 of the 1983 Session Laws, a corporation not engaged in farming or ranching is allowed to own farm or ranch land when that land is necessary for the the corporation's residential or commercial development, siting of the corporation's buildings, plants, facilities, or other uses, or for uses supportive of the corporation's nonagricultural activities. Under the provision the corporation is required to lease out land not actually presently being used by the corporation for its purposes.

Since this provision expires in 1985, the committee was aware that consideration had to be given to the issue of legitimate ownership of farmland by nonagricultural corporations. Some examples of such ownership include coal mines, railroad lines, industrial parks, and various other industrial uses located in the rural parts of the state. Since such ownership is necessary to other economic interests of the state, and since the policy of preserving family farms is enhanced by the requirement that as much land as possible be leased out for use by family farmers, the committee believes the exemption should be made permanent.

Partnership Farms

The corporate farm prohibition has never applied to farms held in partnership. This difference has not been a topic of concern primarily because partnerships have neither the indefinite duration of corporations nor, generally, the ability to raise the capital a corporation can raise. However, the committee learned that this situation has been changing in recent years. The primary approach taken is to establish limited partnerships. A limited partnership is one in which limited partners have the economic status of shareholders (i.e, no liability beyond investment), while the general partners assume more liability and have, typically, all or most managerial authority in the partnership. Since a limited partnership does not terminate on the death of one of the limited partners, but only on the death or withdrawal of a general partner, long-term existence is possible, along with the ability to amass considerable quantities of capital. The committee heard testimony of efforts by limited partnerships and other enterprises to enlist North Dakota farmers in limited partnerships. These efforts included placing recorded telephone calls asking whether farmers are in economic trouble.

These enterprises have been more prevalent in states without North Dakota's strict corporate farming law. The committee examined a 124-page prospectus from such an organization established in Illinois. The committee is extremely concerned that the formation of limited partnerships may result in a substantial eroding of the policy behind North Dakota's corporate farm prohibition.

However, the committee also recognizes that there may be partnership farms involving family members which are appropriate. Such an example could arise when the parents, owning their own farm, both die, with the farm being left to two children, each of whom is engaged in lawful family corporate farming. It is possible the two children may decide to operate the parents' farm as a partnership farm, with each child operating his own farm as an independent corporation. To preserve the basic principle of North Dakota's corporate farm provisions, and yet allow legitimate membership by corporations in partnership farms, the committee believes that it is appropriate to prohibit corporations from being a partner, whether limited or general, in a corporate farm unless that corporation is an eligible farm corporation under North Dakota law.

Fiduciary Disclosure Exemption

On many occasions farm or ranch land may be held by a trust, bank, or foundation serving in a fiduciary capacity on behalf of an individual. Technically such a holding violates the corporate farming law, although, when that holding is for an individual who is eligible to own a corporate farm, such a holding is proper. Furthermore, disclosure of the identity of shareholders in such a situation may not be proper under the trustee relationship. The committee believes it appropriate to exempt such organizations and holdings as long as they are on behalf of an individual who is eligible to own a corporate farm.

Future Acquisition by Nonprofit Organizations

The committee was especially aware of the possibility that nonprofit organizations may acquire agricultural land in the future, often without having actively sought out the land. This situation is especially likely to arise in the case of donations by gift or will. Such a holding usually violates the corporate farming prohibition because the recipient is neither a family farm, an exempt organization under Section 501(c)(3) of the Internal Revenue Code, nor a trust for the benefit of an individual qualified to own a family farm. However, such holdings may be quite appropriate as a means of providing capital and income to a worthy charitable organization. The committee believes such donations should not be discouraged merely because of the existence of the corporate farming law. However, the committee is aware that eventual divestiture should be required to prevent a charity from acquiring enough land to prevent acquisition by family farmers. Much of the committee's discussion centered around exactly where the line should be drawn in determining the divestiture time. Too short a deadline would effectively lower the value of the property as potential buyers would be aware of the requirement that the charity divest itself of the land, thus enabling buyers to "bid down" the price of land on the threat of just waiting for the divestiture period to expire. Conversely, too long a period would subvert the policy behind the corporation farming prohibition. The committee believes a five-year divestiture period is a reasonable compromise between these two needs.

Recommendations

[This paragraph was deleted by the Legislative Council at its November meeting, but is printed here pursuant to Rule 5 of the Supplementary Rules of Operation and Procedure of the Legislative Council: The committee recognizes that the first two of the three bills recommended by the committee are inconsistent and that the Legislative Assembly will be required to choose between them.]

The committee recommends House Bill No. 1067 reflecting the committee's deliberations on the issues relating to charitable organizations, family farms, divestiture, and disclosure. The bill defines, as a qualifying nonprofit organization which may engage in farming or ranching, one that is exempt under Section 501(c)(3) of the Internal Revenue Code, a private foundation or public charity exempt under Section 509 (a) of the Internal Revenue Code, or a trust described in Section 4947 of the Internal Revenue Code for which a charitable deduction is allowed. The bill also limits the exemption to farmland or ranch land essential to the charitable mission of the nonprofit organization.

The bill also requires that land being held for scenic preservation be either entirely closed to hunting or open to hunting by the general public.

The bill also clarifies that the required relationship for family farm shareholders applies to those who inherit from a deceased shareholder as well as to living shareholders. The bill further clarifies that an adult child of a shareholder may be a qualifying shareholder. The bill limits nonfarm rent and nonfarm royalties, and all dividends, interest, and annuities to 20 percent of a family farm corporation's income. The bill exempts trusts and other fiduciaries from the disclosure requirements of the family farm corporation law. The bill also allows an industrial and business use exception for land necessary for the operation of a nonagricultural business and requires that the land not actively used by the business be made available for leasing out for use by farmers. The bill also covers future acquisition of land by nonprofit organizations, by limiting that acquisition to corporations incorporated by 1985 and further by limiting the use of that land to preservation of natural areas and habitats for biota. Finally, the bill requires all nonprofit organizations that acquire land after December 31, 1984, to dispose of that land within five years of the initial acquisition. It defines ownership as acquisition of either fee title or equitable title.

[This recommendation was deleted by the Legislative Council at its November meeting, but is printed here pursuant to Rule 5 of the Supplementary Rules of Operation and Procedure of the Legislative Council: The committee recommends a bill to reinstate the corporate farming prohibition concept as originally enacted by the 1932 initiated measure. As under the initiated measure, the bill prohibits all orporate farming and requires corporations owning farm or ranch land to dispose of that land. The bill requires the disposal to be made within five years of acquisition and provides that the land escheats to the county if the required disposal is not made. The bill allows acquisition resulting from mortgage foreclosures and similar actions. These acquisitions are subject to the same divestiture requirements.]

The committee recommends House Bill No. 1068 to prohibit a corporation from being a partner in a farm partnership unless that corporation is a valid family farm corporation.

RAILROAD BRANCHLINE ABANDONMENT STUDY

House Concurrent Resolution No. 3079 directed a study of railroad abandonments, especially the possibility of the forfeiture of mineral interests on land grant holdings in the event of abandonment of rail lines. Although the forfeiture of land grant holdings had a special appeal, the committee soon realized that such a decision lay solely in the hands of Congress and, aside from passing a resolution urging Congress to take such action, there is little the Legislative Assembly can do to promote that result. The same restrictions apply to proposals that railroads, in determining whether a branchline can be abandoned, include in their profit picture income derived from holdings traceable to the original land grant.

The committee was also aware that land grant railroads comprise only a minority of the total railroad mileage in the state and that a proposal along the lines of the resolution would not completely address the problem. The only land grant line in North Dakota is the line from Fargo to Beach. The other lines in the state, including the one crossing the state from Grand Forks to Williston, were generally acquired by purchase by the railroads rather than by land grants from the government. A few lines are on state-owned right of way used under an 1893 provision of North Dakota law, presently codified as NDCC Section 49-09-01, which granted railroads a 100-foot wide right of way for the purpose of establishing railroad lines and branchlines. Under that provision the land reverts to the state on the abandonment on the property for railroad purposes. Technically the railroads only have an easement on this land and in any event, lands acquired under the provision comprise only a very small part of the total railroad mileage in the state. Further action by the committee is unnecessary because of the reversion requirement.

Consequently, the committee directed its efforts toward a solution which could be accomplished at the state level. The agency most concerned with railroads in the state is the Public Service Commission (PSC). However, the PSC's role is primarily limited to regulating intrastate railroads. The PSC's role in railroad abandonment cases is to serve as an advocate for the shippers in attempting to persuade the Interstate Commerce Commission (ICC) to deny a permit to abandon the railroad. Permission of the ICC is necessary to abandon a branchline. On a national scale intervention by shippers has been almost universally unsuccessful. One notable exception was the PSC's efforts on behalf of the line from York to Dunseith. In 1982 the PSC successfully intervened in the abandonment proceedings and persuaded the ICC to require the railroad to maintain 14.4 miles of branchline from York to Wolford. However, this success was the rare exception to the general nationwide trend of approval of proposed branchline abandonments.

Some concern was expressed as to the efficacy of the PSC's intervention in abandonment cases. Although it was proposed that the PSC be required to intervene in all abandonment cases, the committee believes it more appropriate to compel that intervention only when there is somebody actually concerned with the abandonment. Occasionally rail lines are abandoned and even local shippers agree there is no longer any point in having rail service. Consequently, the committee believes the PSC should be required to intervene only if requested to do so by a shipper or a political subdivision affected by a proposed abandonment. This, of course, would not prevent the PSC from intervening in any case on its own decision.

The committee learned of a railroad abandonment case in Minnesota which was successfully countered by the establishment of a small company to operate the branchline in question. The issue eventually came before the United States Supreme Court when the small company tried to invoke Minnesota's eminent domain law to condemn the branchline in question. The United States Supreme Court upheld the condemnation as a valid public use.

The committee believes that if such a situation arises in North Dakota, the new railroad should be successful in condemning the branchline. Under NDCC Chapter 49-17.2 eminent domain power is granted to political subdivisions which form regional railroad authorities to take over and operate a branchline slated for abandonment. The distinguishing feature in the Minnesota case was that the small railroad was operated by private enterprise. Since railroads in North Dakota no longer have eminent domain power, the committee believes it necessary to clarify that that power should be allowed to small railroads trying to keep a branchline in operation. To prevent abuse of the eminent domain power, the committee believes it advisable to limit the power to

the actual property abandoned and to property reasonably necessary to operate on the branchline, and further to require exercise of the power within a year of the abandonment. Since the most valuable property at issue is usually the rail, and this is usually taken up within a year of the abandonment, the committee believes the one-year limitation to be a workable one. The committee understands this does not solve the underlying problem of providing funding for the acquisition of the property by eminent domain. However, assuming a small railroad is able to find the necessary funding, the committee believes that railroad should be given the assistance necessary to effect a takeover of the branchline.

Recommendation

The committee recommends Senate Bill No. 2080 to require the Public Service Commission to intervene, on request of any shipper or political subdivision affected by the proposed abandonment, in the federal process for approving abandonment of a railroad. The bill also grants to railroads exclusively regulated by the Public Service Commission limited eminent domain power to condemn branchlines that are being abandoned. The bill requires that the condemnation occur within one year of the abandonment and limits the power to the branchline in question and to property reasonably necessary to reestablish the branchline.

TAX-EXEMPT FARMER LOAN STUDY

In accordance with the directives of House Concurrent Resolution No. 3094, the committee studied the feasibility and desirability of establishing a fund for loans to farmers funded privately by earnings from mineral royalties, with emphasis on the role of the Legislative Assembly in establishing and operating such a fund, income tax incentives on the state and federal level for deposit of moneys in such a fund, and committing state funds to a contingency fund for repayment of loans. There are already a number of state programs for farmers, especially beginning farmers. These programs include direct loans, tax incentives, and loan guarantees. The tax incentives include exemption of rental income for land rented to beginning farmers, an exemption for interest received on a contract for deed for the sale of a farm to a beginning farmer, and exemption of the profit on the sale.

There are tax incentives at the federal level, too, although not generally concentrating on farmers. Under Section 103 of the Internal Revenue Code, municipal bond interest is exempt from federal income taxes. There are many municipal bond programs authorized under the Internal Revenue Code. Various provisions of the Internal Revenue Code delineate exactly the kinds of state and local bonds that qualify for tax-exempt status. Prime examples include the Municipal Industrial Development Act (MIDA) and mortgage subsidy bonds. However, none of these exemptions makes any distinction on the basis of the investor's source of money to buy the bond. Thus there would be no need to create a special program to encourage recipients of mineral royalties, as opposed to other potential investors, to participate in a fund as envisioned by the study resolution. An emphasis of the proposal is that the state supplement the other state programs by establishing a funding mechanism in which the primary emphasis for investors is exemption from state income taxes.

Because the Legislative Assembly can effect no changes in federal tax incentives, the serious problem with feasibility of a funding mechanism is that, for most North Dakota taxpayers, the state income tax is by definition 10.5 percent of the federal income tax. The committee believes it doubtful that many people would make investment decisions on the basis of the tax-exempt status of investments whose income involves such a limited part of the total tax liability. The committee believes that a tax shelter investment program would not be sufficiently different from the state's beginning farmer programs to justify separate implementation. Existing tax-exempt bond programs already take advantage of the exemption from federal income taxes of interest on state and municipal bonds.

The committee was directed to study the desirability and feasibility of a fund to provide loans to farmers, with funding by earnings from mineral royalties. The committee has no doubt as to the desirability of the fund. However, the committee makes no recommendation as to this issue because of serious doubts as to the feasibility of such a loan fund.

JUDICIARY "B" COMMITTEE

The Judiciary "B" Committee was assigned three studies. House Concurrent Resolution No. 3095 directed a study of the secured transaction laws as they relate to sales and purchases by merchants and buyers of secured farm products in an effort to establish a legal relationship between merchants and buyers of farm products and lending institutions with security interests in those farm products which is equitable to all parties. House Concurrent Resolution No. 3061 directed a study of the penalty provisions of the game and fish laws of the state with emphasis on determining the desirability of establishing noncriminal rather than criminal penalties for certain offenses. Senate Concurrent Resolution No. 4053 directed a study of state laws governing the possession, sale, and use of pistols, machine guns, bombs, explosives, and other weapons. Efforts were to be directed toward a revision of the substance, form, and style of current weapon statutes. The committee was also assigned responsibility by the Legislative Council for statutory and constitutional revisions.

Committee members were Senators Raymon E. Holmberg (Chairman), James A. Dotzenrod, E. Gene Hilken, Bonnie Miller Heinrich, John M. Olson, and Wayne Stenehjem; and Representatives Pat Conmy, Kenneth E. Koehn, William E. Kretschmar, Bruce W. Larson, Donald E. Lloyd, Jack Murphy, John M. Riley, and Janet Wentz. Senator Francis Barth was a member of the committee prior to his death in April 1984.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

SECURED TRANSACTION LAWS

Background

North Dakota Century Code (NDCC) Section 41-09-28 (1) (UCC 9-307) provides:

> A buyer in ordinary course of business (subsection 9 of section 41-01-11) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

Prior to July 1, 1983, pursuant to Section 41-09-28 (1) a purchaser of farm products from a farmer was liable for any obligation of the farmer which was secured by the farm products. Thus, the purchaser may have paid for the products twice if the secured party's name was not on the check to the seller made in payment for the farm products and the seller defaulted in paying off the obligation.

As introduced during the 1983 Legislative Assembly, Senate Bill No. 2321 amended Section 41-09-28(1) to delete language "other than a person buying farm products from a person engaged in farming operations" and added a new subsection to Section 41-09-28 to read:

> A commission merchant who sells livestock or agricultural products for another for a fee or commission is not liable to the holder of the security interest created by the seller of such livestock or products even though the security interest is perfected where the sale is made in ordinary course of business and without knowledge of the perfected security interest.

With these changes the buyer of farm products would not have been liable to the holder of a security interest even where it was perfected and the buyer had knowledge of its existence. A commission merchant would take free of the interest if the sale were made without knowledge of the perfected security interest.

There was considerable testimony before the standing Committees on Agriculture concerning Senate Bill No. 2321 from groups that buy and sell farm products and from banks which hold secured interests in the products. The bill was amended and as enrolled made no changes to subsection 1 but added five new subsections to Section 41-09-28 which were effective July 1, 1983. These provisions include the following:

1. The seller of products must execute a certificate of ownership containing (a) names, Social Security numbers, addresses, and home counties of the owners for five years prior to the sale; (b) the county of location of the property prior to the sale; and (c) the names of the security interest holders or the statement that no security interest exists. The certificate must include a warning that an untrue statement would constitute a criminal offense. The name of the secured party must be on the check as well as the name of the seller.
2. A lender must advise the borrower that should he sell the products the secured interest must be disclosed and the check must include the name of the secured party.
3. The lender must make a good faith effort to collect from the borrower before pursuing the merchant.
4. Merchants take free of the security interest if they comply with certain requirements which basically include (a) execution of the certificate of ownership; (b) where no security interests are disclosed the merchant must request from the register of deeds information concerning any relevant financing statements in the county of the seller's residence of the last five years and must include the name of any disclosed security party on checks given to the seller in payment for the farm products; (c) the merchant may have no knowledge at the time of the transaction of the existence of security interests; and (d) the merchant must maintain records to support criminal proceedings against the seller.

Senate Bill No. 2321 was looked upon as a compromise worked out by most of the competing interests. Buyers of farm products would have preferred to take the products clear of the security interests and the parties giving credit would have preferred to leave the law as it was.

Another bill approved by the 1983 Legislative Assembly, House Bill No. 1641, provided that the register of deeds must:

> Furnish upon written or telephone request to merchants, as referred to in subsection 7 of section 41-09-28, the information contained in financing statements

filed to perfect a security interest pursuant to chapter 41-09 when the collateral is farm products, and to provide written confirmation of the oral information provided upon receipt of a fee which shall be the same as for recording that instrument.

Testimony

The committee heard testimony from representatives of banking organizations, livestock marketing associations, grain elevators, farmer organizations, and numerous individuals.

Representatives for the merchants' organizations testified about problems with the new law including:

1. Customers are offended by being asked about finances.
2. It is impossible to contact registers of deeds in the evenings and on Saturdays, and it is difficult to contact them at other times.
3. Additional staff and telephone lines have been required to comply with the new law.
4. The use of blanket mortgages by Commodity Credit Corporation results in much confusion and expense under these requirements.

The merchants think it is unfair for a lending agency to make a loan and then make the elevator or market responsible for collection. Merchants and farmers had a number of suggestions with the most popular being that the merchant should take free of the secured interest.

The banking organizations favored giving all parties more time to become familiar with the new law in the hope many of the problems experienced by the parties could be resolved without another change in the law. If changes are made, the banking organizations would prefer the law in effect prior to the 1983 legislative session. Representatives for the banks have testified that credit would disappear for this type of loan if they do not have a secured interest.

Bill Drafts to Change Exception

The committee considered bill drafts which would have:

1. Deleted the exception for a person buying farm products from a person engaged in farming operations and provided a commission merchant who sells livestock or agricultural products for another for a fee or commission is not liable to the holder of a security interest created by the seller of such livestock or products even though the security interest is perfected when the sale is made in the ordinary course of business and without knowledge of the perfected security interest.
2. Provided that a buyer in the ordinary course of business who purchases farm products, a merchant who purchases farm products, or a commission merchant who sells farm products takes free of the security interest if the check or draft is made jointly to the seller and the secured party, or the seller and a bank selected by the seller.

Central Filing

Presently all Uniform Commerical Code (UCC) farm products statements are filed in the offices of registers of deed across the state. The committee considered a bill draft that would have provided for the central filing of farm product financing statements in the Secretary of State's office. A subcommittee was appointed to study the feasibility of central filing. Financial institutions, federal agencies, and registers of deeds were contacted to determine the number of UCC farm products financing statements filed per year. Based on the information provided by those organizations, it appears there are approximately 30,000 new filings per year with approximately one-half of those filings being made by the Commodity Credit Corporation. A representative for the Central Data Processing Division of the Office of Management and Budget prepared a proposal for a system that could accommodate the central filing of these documents.

The bill draft would have:

1. Required all future farm products financing statements to be filed in the Secretary of State's office.
2. Provided that as of July 1, 1987, all the financing statements filed with registers of deeds would be ineffective. Certified copies of security documents filed with the registers of deeds could be filed with the Secretary of State and the priority of filing of such documents would be based on the original filing date with the registers of deeds.
3. Required the merchant, until July 1, 1987, to contact both the register of deeds and the Secretary of State in order to take free of the security interest.
4. Provided that the register of deeds could not charge a fee for supplying the information. The fee would have been charged by the Secretary of State, but the fee amount was not set by the bill draft at the time it was considered.

When the bill draft providing for central filing was considered by the committee, auction market and grain elevator merchants and farmers unanimously opposed the bill draft. They contended:

1. The certificate of ownership form is not changed, even though it is disliked by everyone who must use it.
2. The central filing system could not handle the volume of requests for information now handled by officials in 53 counties.
3. For a period of two years the merchant would have to check for security interests in two places rather than one as now required.
4. The merchants would have to pay for the telephone requests. They now can obtain that information free.
5. Government should not be centralized in Bismarck, and there would be a loss of revenues to the counties.

The banking organizations supported the central filing system. They suggested changes could be made to the bill draft to make it more acceptable to merchants and farmers; for example, there could be a one-year rather than a two-year period for checking with both the register of deeds and the Secretary of State. There could be a double filing rather than a doublecheck. The opinion was also expressed that central filing was being opposed as an indirect method to obtain approval of the bill draft to delete the exception for farm products.

Conclusion

The purpose of the study was to develop a compromise acceptable to the different groups. The committee concluded that the bill drafts limiting the exception in NDCC Section 41-09-28(1) represented the

view of only one of the parties to the transactions and it was not the proper role of the committee to recommend them. The committee also concluded that it could not recommend central filing because it was not supported by the groups it was meant to aid.

GAME AND FISH LAWS

Background

Title 20.1, Game, Fish, Predators and Boating, contains 14 chapters. The title contains 33 sections which establish various penalties for violation of the title. Two of these sections establish Class A misdemeanor criminal penalties, 16 sections establish Class B misdemeanor criminal penalties, 11 sections establish infraction penalties, and the remainder of the sections contain noncriminal penalties. Many of the Class B misdemeanor penalties apply broadly to prohibited activities within a chapter under the title for which a specific penalty has not been established. A Class A misdemeanor has a maximum penalty of one year's imprisonment, a fine of $1,000, or both. A Class B misdemeanor has a maximum penalty of 30 days' imprisonment, a fine of $500, or both. An infraction has a maximum fine of $500.

House Concurrent Resolution No. 3061 was introduced at the request of a district judge who thought many game and fish violations should have noncriminal penalties. A representative of the Game and Fish Department testified that a number of violations in Title 20.1 could be reclassified noncriminal. The department provided the committee with a list of sections for which violations could be noncriminal offenses and with a possible administrative system for paying fees similar to that used for traffic offenses. The department suggested any violation involving alcohol or any affecting wildlife remain a criminal violation.

The committee concluded there were a number of violations that would be better handled as noncriminal offenses.

Recommendations

The committee recommends House Bill No. 1070 to:

1. Make a number of the less serious offenses in the game and fish title noncriminal offenses. The penalty for a Class 1 noncriminal offense is $50 and for a Class 2 noncriminal offense $25. Noncriminal violations include a number of requirements concerning licenses; equipment requirements relating to types of guns which may be used, use of propane exploders, and boat safety; clothing restrictions such as the fluorescent orange garment big game hunters must wear; and hours and methods of hunting. The bill also allows noncriminal penalties to be established for any proclamations issued by the Governor and for any rules adopted by the Game and Fish Commissioner. The maximum noncriminal penalty that may be set by the Governor or Game and Fish Commissioner is a fine of $250.
2. Provide for a system for paying fees which is similar to that used for noncriminal traffic offenses. A person would have the option to:
   a. Plead guilty, pay the fine, and not go to court.
   b. Plead guilty but appear in court in order to have the penalty reduced.
   c. Dispute the charge and go to court.

The committee also recommends House Bill No. 1071 to provide that a judge may suspend a defendant's license for criminal and noncriminal convictions under Title 20.1. This was added because of House Bill No. 1070. House Bill No. 1071 would also allow the court to require a defendant to take a hunter instruction course before the defendant could obtain a new license after the court has suspended the defendant's license for a violation of Title 20.1. This was in response to the committee's concern that violations, particularly repeat violations, of the hunting laws may reflect the need for instruction on hunter responsibility.

WEAPONS

Background

The current federal firearms legislation was enacted 16 years ago as the Gun Control Act of 1968. Generally, the Act requires a dealer involved in the interstate sale of firearms to obtain a federal license; limits, with certain exemptions, the purchase of firearms to the buyer's state of residence; prohibits the sale of firearms to juveniles; prohibits dealers from selling weapons to certain groups such as mentally defective persons, drug addicts, felons and fugitives; and limits mail order sale of firearms.

The Act's effect on state law is established by 18 U.S.C. 927:

> No provision of this chapter shall be construed as indicating an intent on the part of Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

North Dakota firearms law consists of NDCC Chapters 62-01 through 62-05. These chapters cover the possession, sale, and use of pistols and revolvers; possession, sale and use of machine guns and bombs; explosives and concealed weapons; miscellaneous provisions; and the purchase of rifles and shotguns in contiguous states.

House Bill No. 1445, as introduced during the 1983 Legislative Assembly, would have prohibited all political subdivisions, including home rule cities and counties, from enacting any ordinances relating to the regulation of firearms or ammunition in any form. All such existing ordinances would have been void. As enacted, the bill provided that no political subdivision, including home rule cities or counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, and licensing of firearms and ammunition which is more restrictive than state law. It also provided that all such existing ordinances are void.

The testimony before the standing committees hearing House Bill No. 1445 indicated that the intent of the bill as introduced was to provide for uniformity of firearms laws in North Dakota. The bill was in reaction to ordinances passed in other states to either require all individuals to own guns or to prevent any ownership of guns.

The testimony at the hearings on House Bill No. 1445 and Senate Concurrent Resolution No. 4053 indicated the reason House Bill No. 1445 was not enacted as introduced was that the state law — Title 62 — did not adequately provide for regulation of firearms. That inadequacy was the basis for the study directed by Senate Concurrent Resolution No. 4053.

The committee requested a bill draft early in the

interim and based on suggestions of those testifying the committee considered six drafts of the bill.

Testimony

The committee received testimony from representatives for sportsmen groups, the League of Cities, the Attorney General's office, law enforcement, and a number of citizens. The committee made a great deal of effort to consider and incorporate suggestions from the many diverse groups interested in the bill draft.

Recommendation

The committee recommends House Bill No. 1069 to repeal the entire weapons title and enact a new one. The bill, among other things:

1. Expresses legislative intent that the right to possess and use firearms for lawful purposes be protected from government interference, and that regulation thereof be limited to those measures necessary for public safety.
   The intent is also expressed that the granting of a concealed weapons license is mandatory rather than permissive.
2. Clearly defines those people that may not possess a firearm to include individuals who have been confined to a hospital or institution as mentally ill or mentally deficient. This limitation does not apply to a person who possesses a certificate from a licensed physician, licensed psychiatrist, or licensed clinical psycholgist stating the person has not suffered from the disability for the previous three years. Present law forbids the possession of a pistol by anyone who is emotionally unstable. "Emotionally unstable" is not defined and therefore it is left to the city or county official responsible for issuing the license to make that decision. The committee concluded this procedure is possibly subject to abuse.
3. Eliminates the current permit system for the carrying of a handgun. The committee concluded this permit system serves no useful purpose.
4. Provides that a handgun may be carried, if not otherwise prohibited, if:
   a. Between the hours of sunrise and sunset, the handgun is carried unloaded and either in plain view or secured.
   b. Between the hours of sunset and sunrise, the handgun is carried unloaded and secured.

   A number of exceptions to these restrictions are provided including those for hunters, an individual with a concealed weapon license, individuals on their own land, individuals target practicing, and law enforcement officers. The major impact of this section is on the carrying of handguns in motor vehicles. These requirements were added to provide law enforcement officers with additional protection.
5. Provides for a concealed weapons license and the procedure for obtaining one. The bill requires the applicant to state a reason for obtaining the license such as self-protection or work. A simple open book written examination and a simple proficiency test must be passed. The licenses are to be issued by the chief of the Bureau of Criminal Investigation if the applicant meets these necessary requirements, passes a background check for a criminal record, and has paid the necessary fee. The committee emphasized in the bill's legislative intent section that this was a mandatory, not permissive, procedure on the part of the chief. If a license is denied the applicant may request an administrative hearing and appeal to the courts. Present law provides no person may carry a concealed weapon unless it is carried "in prosecution of or to effect a lawful and legitimate purpose." That requirement gives neither the individual carrying the weapon nor a law enforcement officer a clear idea when the individual is violating the law.
6. Provides that an individual may not knowingly sell a handgun to an individual who is prohibited from owning one. Present law requires an individual to obtain the buyer's signature on an affidavit stating he is not prohibited from owning a firearm and the seller must send a copy to the Bureau of Criminal Investigation. The committee concluded these requirements have not been followed and as a result many otherwise law abiding citizens were guilty of a criminal violation.
7. Removes the requirement that an individual must obtain a license from the judge of the district court before purchasing, selling, or possessing a machine gun, submachine gun, automatic rifle, or rifle. The bill requires the individual have a federal license for such a weapon.
8. Prohibits the possession of a firearm at a public gathering and the discharge of a firearm within a city. There are a number of exceptions for those instances where such activities are necessary. Political subdivisions may enact ordinances relating to the possession of firearms at public gatherings which would supersede this prohibition.

CONSTITUTIONAL AND STATUTORY REVISION

New Executive Branch Article — Recommendation

The committee recommends House Concurrent Resolution No. 3003 to create a new executive branch article for the Constitution of North Dakota. The new article retains all the current elected state officials. The new article provides for the election, qualification, and compensation of executive officials, for the powers and duties of the Governor, and for gubernatorial succession. The present Article V of the constitution is repealed. The changes will take effect on July 1, 1987. The provisions of this resolution are based on recommendations of the 1972 Constitutional Convention. The proposal simplifies and places the executive article in a more logical order. The resolution would, among other things:

1. Remove all age restrictions for anyone to be eligible to hold elective office established by the article.
2. Require the Attorney General to be licensed to practice law in the state.
3. Give the Governor authority to grant reprieves, commutations, and pardons. The Governor may delegate the power as provided by law. Provisions establishing the Board of Pardons and its powers are not contained in the resolution.
4. Reduce from five to two the number of years an elector must reside in the state before being eligible to hold the office of Governor.
5. Remove provisions relating to the Governor offering or accepting bribes.

Procedure for Levy of Execution — Recommendation

A problem with North Dakota statutes concerning

the procedure for levy of an execution was brought to the committee's attention by a Fargo attorney. In 1975 portions of Chapter 32-08, relating to attachment, were declared unconstitutional. The 1977 Legislative Assembly repealed Chapter 32-08 and enacted new attachment provisions — Chapter 32-08.1. Section 32-08-10 provided a procedure for levying under a warrant of attachment and Section 28-21-08 referred to that procedure as the procedure to follow in levying an execution. However, Chapter 32-08.1 does not contain a procedure for levying an attachment, but instead refers to the procedure to be used in levying an execution. Thus, no procedure exists either for levying an attachment or an execution because the attachment chapter says to follow the procedure for an execution and the execution chapter says to follow the procedure for an attachment.

The committee recommends Senate Bill No. 2083 to provide for a procedure to levy an execution as was provided for in the former Section 32-08-10.

Foreclosure of Statutory Liens on Personal Property and the Enforcement of a Pledge by Sale — Recommendation

Problems with North Dakota statutes concerning foreclosure of statutory liens on personal property, and the enforcement of a pledge by sale were brought to the committee's attention by a Fargo attorney. Section 35-01-29 provides that the foreclosure of a statutory lien on personal property must be in the manner of foreclosure of a pledge of personal property under the procedure provided by Sections 35-06-12 through 35-06-24. These sections were repealed in 1965 with enactment of the Uniform Commercial Code. Thus there is no procedure for foreclosure of a statutory lien on personal property because there is no procedure for foreclosure of a pledge of personal property.

The committee recommends Senate Bill No. 2084, relating to foreclosure of statuory liens on personal property and enforcement of a pledge by sale. The bill amends Section 35-01-29 so that the foreclosure of a statutory lien on personal property would be that provided by Chapter 32-20, which governs foreclosure of liens on personal property. The bill also amends Section 35-06-11 to provide for the sale of property subject to a pledge in the manner provided for the sale of property subject to a security interest under Section 41-09-50 (Uniform Commercial Code).

Foreclosure on Personal Property — Recommendation

In 1983 a district court judge ruled that Chapter 32-20, relating to foreclosure on personal property, is unconstitutional. Pursuant to Chapter 32-20, an action may be maintained in district court to foreclose any lien upon personal property. Upon the filing of an action, if the creditor is not in possession of the property, the clerk of court may issue a warrant commanding the sheriff to seize and store property pending a final judgment in the action. The warrant may be issued upon the filing of a verified complaint with the clerk setting forth the creditor's cause of action against the debtor. The sheriff is then required to execute immediately the warrant by seizing the property. The creditor is required to post a bond sufficient to cover all costs that may be awarded to the defendant and all damages which may occur if the creditor fails in his action. Additionally, Section 32-20-06 incorporates by reference the provisions of the attachment chapter relative to rebonding, and other specific provisions. Therefore, the debtor may post a bond to regain the property if he so desires.

The court held the statute does not provide for proper judicial supervision in the issuance of an ex parte warrant of attachment. It held the impact of the seizure of farm implements outweighs the state's interest in providing for ex parte preliminary relief for creditors where there is no requirement of exigent circumstances.

The committee recommends Senate Bill No. 2085 to provide a new procedure for foreclosure on personal property which requires:

1. The affidavit supporting the request for a warrant of attachment must allege the necessity for summary procedure to prevent removal, destruction, or concealment of the property.
2. The judge, not the clerk of court, must issue the warrant.
3. The debtor has a right to a hearing before the property may be taken at which time the judge must consider the undue hardship the taking would cause the debtor.

Qualifications of Notaries Public — Recommendation

A recent United States Supreme Court case, Bernal v. Fainter, No.83-630, held a Texas state statute relating to notaries public unconstitutional.

The Supreme Court held that the requirement that notaries public must be United States citizens violated the Equal Protection Clause of the 14th Amendment to the United States Constitution. As a general matter, a state law that discriminates on the basis of alienage can be sustained only if it can withstand strict judicial scrutiny. To withstand strict scrutiny, the law must advance a compelling state interest by the least restricted means available.

A political function exception to the strict scrutiny rule applies to laws that exclude aliens from positions intimately related to the process of democratic self-government. Under this exception, the standard of review is lowered when evaluating the validity of exclusions that entrust only to citizens important elective and nonelective positions whose operations go to the heart of representative government. The political function exception did not apply in this instance because notaries public do not fall within the category of officials who perform functions that go to the heart of representative government. The focus on the inquiry is whether the position is such that the officeholder would necessarily exercise broad discretionary power over the formulation or execution of public policies importantly affecting the citizen population.

The committee recommends House Bill No. 1074 to remove the requirement in North Dakota law that a notary public be a United States citizen.

Vacancy in Office of District or County Judge or Supreme Court Justice — Recommendation

Sections 44-02-03 and 44-02-44 provide that a vacancy in a state office would be filled by appointment of the Governor and in a county office by appointment of the county commissioners. In 1977 a constitutional amendment was approved requiring the appointment of the Judiciary Nominating Committee. In 1978 the North Dakota Supreme Court held that upon the establishment of the Judicial Nominating Committee, Section 44-02-03 was repealed by implication with regard to the filling of vacancies in the office of district judge. Chapter 27-25, which creates the Judicial Nominating Committee for district court judges and Supreme Court justices, was enacted in 1981. Chapter 27-26,

which creates the Judicial Nominating Committee for county court judges, was enacted in 1983.

The committee recommends House Bill No. 1073 to provide that vacancies in the office of district or county judge or Supreme Court justice must be filled according to the requirements of the chapters concerning the respective Judicial Nominating Committee.

Bad Check Laws — Recommendations

Section 6-08-16(4) provides, in part:

> A notice of dishonor must be sent by the holder of the check upon dishonor, prior to the institution of a criminal proceeding, the notice to be in substantially the following form:
>
> (Part of the form of the notice is then set forth and it then continues:) Payment to holder of the face amount of the instrument, plus any collection fees or costs, not exceeding the additional sum of ten dollars, shall constitute a defense to a criminal charge brought hereunder if paid within ten days from receipt of this notice of dishonor. If payment of the above amounts is not made within ten days from receipt of this notice of dishonor, a civil penalty . . . will be assessed. . . . (emphasis added)

In State v. Fisher, 349 N.W.2d 16, decided in May 1984, the North Dakota Supreme Court held the affirmative defense provision of the misdemeanor bad check law unconstitutional because it violates the equal protection provisions of the state and federal constitutions by creating a classification based on wealth with no substantial relationship to any important state interest.

The committee recommends House Bill No. 1072 to amend the misdemeanor and felony bad check laws to remove the provision which provided that payment of the check within 10 days after the defendant receives notice of dishonor of the check is a defense.

The committee also recommends House Concurrent Resolution No. 3004, directing the Legislative Council to study the North Dakota felony and misdemeanor bad check laws. The committee was concerned that North Dakota's felony bad check law was found unconstitutional in 1980 and the misdemeanor bad check law unconstitutional in 1984. The committee recognized there may be alternative methods for preventing the issuance of, encouraging the payment of, and penalizing those who write bad checks, which may be recommended as the result of an interim study of this area.

Charitable Organization Solicitation and Fundraising — Recommendations

In June 1984 the United States Supreme Court in Secretary of State of Maryland v. J. H. Munson Company, 104 S.Ct. 2839, held unconstitutional a Maryland statute which prohibited a charitable organization, in connection with any fundraising activity, from paying expenses of more than 25 percent of the amount raised, but authorized a waiver of this limitation where it would effectively prevent the organization from raising contributions. The court held this was an unconstitutional restriction on free speech.

The committee recommends Senate Bill No. 2081 to repeal Section 50-22-04.1, which limits on the amount a charitable organization may incur for solicitation and fundraising expenses.

One of the alternatives to this type of regulation the court suggested was to provide specific penalties for fraud. Therefore, the committee also recommends Senate Bill No. 2082 to make it a crime for a charitable organization, professional fundraiser, or professional solicitor or any agent thereof, to use fraud to solicit a contribution for a charitable organization.

Headnote — Recommendation

North Dakota Century Code Section 1-02-12 provides:

> No headnote, source note, or cross-reference, whether designating an entire title, chapter, section, subsection, or subdivision, shall constitute any part of a statute.

This section is relied upon by the Legislative Council staff (which is responsible for arranging and publishing the laws pursuant to Sections 46-03-10 and 46-03-11) as authority for revising headnotes as necessary to reflect the text of the law. Headnotes are revised, as appropriate, when supplements are published and code volumes are replaced. Most changes to headnotes are made to reflect amendments (either additions or deletions) which are made to bills but which do not include necessary changes to the headnotes. Headnotes are primarily used for convenience of reference, e.g., the section listing at the front of each chapter of the code, and for indexing, e.g., determining what entries are to be made for the general index to the code.

An Attorney General's opinion (84-17) issued in March 1984 held a headnote, although not part of the law, is part of the legislative history.

The committee recommends Senate Bill No. 2088 to provide that a headnote may not be used to determine legislative intent or the legislative history for any statute.

Reconciliation of Statutes — Recommendation

At the conclusion of each legislative session, the Legislative Council staff is responsible for resolving conflicts between different bills passed during that session. North Dakota Century Code Section 1-02-09 provides that the statute latest in date of final passage by the Legislative Assembly prevails. Under the last passed approach, many situations exist where the obvious intent of the Legislative Assembly has not been implemented. The approach followed by the Legislative Council staff in resolving conflicts, and supported by the majority view of jurisdictions, attempts to implement legislative intent to the greatest extent possible. While the statute provides that last passed controls, the Legislative Council staff resolves some conflicts under a legislative intent approach, e.g., when a law is amended after it has been repealed.

The committee recommends Senate Bill No. 2087 to provide that whenever a provision of one or more statutes repeals a law and a provision of one or more statutes passed later during the same session of the Legislative Assembly amends that law, the provision amending the law prevails from the time it becomes effective only if:

1. The Legislative Council, or its designee, determines the intent of the Legislative Assembly was to retain the amended law as an independent law; or
2. The provision amending the law has an earlier effective date than the effective date of the provision repealing the law, in which case the amendment prevails from its effective date

until the effective date of the provision repealing the law.

Voter Assistance Due to a Disability of an Elector — Recommendation

On May 25, 1983, the Attorney General issued an opinion that NDCC Section 16.1-13-27 would conflict with and thus be superseded by the Federal Voting Rights Act as of January 1, 1984.

Section 16.1-13-27 reads:

> Disability of elector. Any elector who declares to the judges of election that he or she cannot read the English language, or that because of blindness or other disability is unable to mark his or her ballot, upon request, shall receive the assistance of both election judges in the marking of his or her ballot. No one assisting any elector in marking a ballot under this chapter shall give information regarding the same. No elector, other than one who is unable to read the English language or one who because of disability is unable to mark a ballot, shall divulge to anyone within the polling place the name of any candidate for whom he or she intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark his or her ballot. (emphasis provided)

The Federal Voting Rights Act (42 U.S.C. 1973 aa-6) effective as of January 1, 1984, reads:

> Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

The committee recommends House Bill No. 1075 to provide that any elector who cannot read or who has a disability may, when voting, receive assistance of any person of the elector's choice, except the elector's employer, officer or agent of the elector's union, or a candidate on the ballot or certain of the candidate's relatives. If the elector requests the assistance of a member of the election board, however, the elector must receive the assistance of both election judges.

Technical Corrections — Recommendation

The committee recommends Senate Bill No. 2086 to make technical corrections to the Century Code. The bill eliminates inaccurate or obsolete name and statutory references and superfluous language, recognizes Supreme Court rules, and resolves conflicts between the constitution and statutes or two statutes. The following table lists the sections which have been amended or repealed and describes the reason for the changes:

North Dakota Century Code Section	Reason for Change
Amendments	
2-03-14	Rule 8 of the North Dakota Rules of Civil Procedure requires a complaint or counterclaim to set forth a statement of a "claim for relief." Prior to the adoption of NDR Civ P in 1957, a complaint or counterclaim was required to allege the pleader's "cause of action."
4-25-04	See explanation for Section 2-03-14.
4-30-04	See explanation for Section 2-03-14.
4-30-07	See explanation for Section 2-03-14.
5-01-06	See explanation for Section 2-03-14.
6-09-27	See explanation for Section 2-03-14.
6-09.4-17	See explanation for Section 2-03-14.
7-07-02	See explanation for Section 2-03-14.
9-08-08	See explanation for Section 2-03-14.
10-15-38(3)	See explanation for Section 2-03-14.
10-15-46(2)	See explanation for Section 2-03-14.
10-15-52.4(4)	See explanation for Section 2-03-14.
10-15-56(1)	See explanation for Section 2-03-14.
10-19-63	See explanation for Section 2-03-14.
10-22-14(4)	See explanation for Section 2-03-14.
10-24-37	See explanation for Section 2-03-14.
10-27-14(4)	See explanation for Section 2-03-14.
11-15-07(2)	A warrant of attachment refers to the procedure under Chapter 32-08, which was replaced by Chapter 32-08.1 in 1977. Chapter 32-08.1 provides for a writ of attachment.
11-15-08	See explanation for Section 11-15-07(2).
11-18-14	See explanation for Section 2-03-14.
13-03-05(2)	See explanation for Section 2-03-14.
14-02-06	See explanation for Section 2-03-14.
14-02-10	See explanation for Section 2-03-14.
14-07.1-06	Section 14-07.1-06 was amended in 1983 to add subsection 2. The words are deleted to provide continuity.
15-20.1-09	Section 15-20.1-08 was repealed by S.L. 1983, ch. 608, § 22.
15-20.4-13	See explanation for Section 2-03-14.
15-47-38(2), (5)	See explanation for Section 2-03-14.
15-47-38.1 (11)	See explanation for Section 2-03-14.

North Dakota Century Code Section	Reason for Change
15-53.1-05.2(1)	1983 Senate Bill No. 2071 made uniform the usage of "assessed valuation" and "taxable valuation." Section 15-53.1-05.2 was created by House Bill No. 1458, which did not reflect the changes made by the Senate Bill.
15-60-08	See explanation for Section 2-03-14.
18-04-05	Everything after the first sentence of the last paragraph was added by S.L. 1983, ch. 251, § 2. The 1983 language refers to a biennial appropriation, while the first sentence of the last paragraph provides for a standing appropriation.
19-03.1-36(1) (h)	Subdivision h was added by S.L. 1983, ch. 256, § 1. The reference to "section" should have been to the subdivision.
21-06-10	The first "sentence" was redrafted to make a complete sentence.
23-28-03(4)	See explanation for Section 2-03-14.
23-28-04(2)	See explanation for Section 2-03-14.
23-28-05(2)	See explanation for Section 2-03-14.
25-02-01	Section 25-10-04, enacted in 1965, transfers control of the State Hospital from the Director of Institutions to the Mental Health and Retardation Division of the Department of Health. In 1981 the bill establishing the Department of Human Services amended Section 25-10-04 to transfer control of the State Hospital to the Department of Human Services. Chapter 25-10 establishes the Mental Health Division of the Department of Human Services. This bill would repeal Section 25-10-04 and place the provision concerning control of the State Hospital into the statute establishing the State Hospital, Section 25-02-01.
26.1-21-01	Section 26.1-01-01 provides for a general definition of "commissioner" for Title 26.1.
27-08.1-01	See explanation for Section 2-03-14.
27-19-01	See explanation for Section 2-03-14.
27-19-04	See explanation for Section 2-03-14.
27-19-09	See explanation for Section 2-03-14.
27-19-12	See explanation for Section 2-03-14.
27-19-13	See explanation for Section 2-03-14.
28-01-05	See explanation for Section 2-03-14.
28-01-14	See explanation for Section 2-03-14.
28-01-15	See explanation for Section 2-03-14.
28-01-16	See explanation for Section 2-03-14.
28-01-17	See explanation for Section 2-03-14.
28-01-18	See explanation for Section 2-03-14.
28-01-19	See explanation for Section 2-03-14.
28-01-22	See explanation for Section 2-03-14.
28-01-22.1	See explanation for Section 2-03-14.
28-01-24	See explanation for Section 2-03-14.
28-01-25	See explanation for Section 2-03-14.
28-01-26	See explanation for Section 2-03-14.
28-01-26.1	See explanation for Section 2-03-14.
28-01-28	See explanation for Section 2-03-14.
28-01-30	See explanation for Section 2-03-14.
28-01-31	See explanation for Section 2-03-14.
28-01-32	See explanation for Section 2-03-14.
28-01-37	See explanation for Section 2-03-14.
28-01-42	See explanation for Section 2-03-14.
28-01.1-02(2)	See explanation for Section 2-03-14.
28-05-07	See explanation for Section 2-03-14.
28-14-06(4)	See explanation for Section 2-03-14.
28-22-07	See explanation for Section 11-15-07(2).
28-26-08	See explanation for Section 2-03-14.
28-26-24	See explanation for Section 2-03-14.
28-32-01(1) (a)	Chapters 54-46 and 54-46.1 provide for rulemaking by the Secretary of State under Chapter 28-32. With the transfer of records management functions to the Office of Management and Budget, which is generally excepted from the application of Chapter 28-32, an exception to the exception continues the application of Chapter 28-32 to rules with respect to records management.
30.1-12-09	See explanation for Section 2-03-14.
32.08.1-03(2)	See explanation for Section 2-03-14.
32-12.1-10	See explanation for Section 2-03-14.
32-13-05	See explanation for Section 2-03-14.
32-15-06	See explanation for Section 2-03-14.
32-17-04	See explanation for Section 2-03-14.
32-19-30	See explanation for Section 2-03-14.
32-20-02	See explanation for Section 2-03-14.

North Dakota Century Code Section	Reason for Change
32-20-03	See explanation for Section 11-15-07(2).
32-22-27(3)	See explanation for Section 2-03-14.
32-38-03(4)	See explanation for Section 2-03-14.
32-39-03	See explanation for Section 2-03-14.
34-01-13	See explanation for Section 2-03-14.
34-06.1-05	See explanation for Section 2-03-14.
34-06.1-06	See explanation for Section 2-03-14.
34-08-09	See explanation for Section 2-03-14.
34-14-08	See explanation for Section 2-03-14.
35-18-01	See explanation for Section 2-03-14.
35-18-05	See explanation for Section 2-03-14.
35-18-11	See explanation for Section 2-03-14.
35-27-27	See explanation for Section 2-03-14.
36-04-12	See explanation for Section 2-03-14.
36-04-16	See explanation for Section 2-03-14.
36-22-08	See explanation for Section 2-03-14.
38-14.2-09	See explanation for Section 2-03-14.
39-01-01(27)	See explanation for Section 2-03-14.
39-12-11	Section 39-12-05.1 was repealed by S.L. 1983, ch. 441, § 3. The provisions of Section 39-12-05.1 were inserted into Section 39-12-05.
39-16-01(3)	See explanation for Section 2-03-14.
39-16.1-01	See explanation for Section 2-03-14.
39-22.3-07	This section, enacted by S.L. 1983, ch. 451, § 1, recognizes the desexing of statutes, but improperly uses "their" to denote a singular number.
40-05.1-13	See explanation for Section 2-03-14.
40-11-10	See explanation for Section 2-03-14.
40-49-17	See explanation for Section 2-03-14.
41-02-101(1)	See explanation for Section 2-03-14.
41-02-104	See explanation for Section 2-03-14.
41-03-22	See explanation for Section 2-03-14.
41-03-68(3)	See explanation for Section 2-03-14.
41-05-15(2)	See explanation for Section 2-03-14.
43-23-10	See explanation for Section 2-03-14.
43-23.1-19	See explanation for Section 2-03-14.
43-23.2-05	See explanation for Section 2-03-14.
43-23.2-06	See explanation for Section 2-03-14.
43-31-06	See explanation for Section 2-03-14.
47-16-17(2)	In 1943 "letter" was changed to (the first) "lessor" and "hirer" was changed to (the second) "lessor." In an attempt to correct this in 1983, the first instead of the second "lessor" was changed to "lessee."
47-16-30	See explanation for Section 2-03-14.
48-02-15	See explanation for Section 2-03-14.
49-04.1-04	See explanation for Section 2-03-14.
51-07-09	See explanation for Section 2-03-14.
51-13-02.1(3)	See explanation for Section 2-03-14.
51-18-05(3)	See explanation for Section 2-03-14.
51-21-04	See explanation for Section 2-03-14.
51-22-03(3)	See explanation for Section 2-03-14.
52-04-12	See explanation for Section 2-03-14.
52-04-16	See explanation for Section 2-03-14.
54-18-12	See explanation for Section 2-03-14.
54-46-03	Records management functions were transferred to the Office of Management and Budget by an agreement dated July 1, 1983, pursuant to the authority granted by Section 54-46-03.1.
54-46-11	See explanation for Section 54-46-03.
54-46.1-01	See explanation for Section 54-46-03.
54-46.1-02	See explanation for Section 54-46-03.
54-46.1-04	See explanation for Section 54-46-03.
54-46.1-05	See explanation for Section 54-46-03.
54-46.1-06	See explanation for Section 54-46-03.
57-15-06.6	Subsection 7 of Section 57-15-06.8 should have been placed in Section 57-15-06.7 by 1983 Senate Bill No. 2065, which consolidated tax levies.
57-15-06.7(19.1), (28)	Subsection 19.1 is a recodification of subsection 7 of Section 57-15-06.8 which was a recodification of subdivision g of subsection 3 of Section 57-15-06, as it existed before 1983 Senate Bill No. 2065. Instead of being placed in Section 57-15-06.8, the provision should have been placed in Section 57-15-06.7. Subsection 28 was formerly subdivision a of subsection 3 of Section 57-15-06 by 1983 Senate Bill No. 2065.

North Dakota Century Code Section	Reason for Change
57-15-06.8	Subsection 7 was derived from subdivision g of subsection 3 of Section 57-15-06 as it existed before 1983 Senate Bill No. 2065. It should have been added to Section 57-15-06.7. The overstruck paragraph duplicates the last paragraph of Section 57-15-06.7.
57-15-10 (25.1)	Subsection 25.1 is derived from Section 57-15-55.1 in recognition of the consolidation of tax levies by 1983 Senate Bill No. 2065.
57-15-20.2(5.1)	Subsection 5.1 is derived from Section 57-15-22.2 in recognition of the consolidation attempted by 1983 Senate Bill No. 2065.
57-15-22.2	1983 Senate Bill No. 2065 consolidated tax levies of political subdivisions. Section 57-15-22.2 was created and enacted in 1983 and did not reflect Senate Bill No. 2065.
57-15.55.1	The changes reflect the revisions made by 1983 Senate Bill No. 2065 with respect to consolidation of tax levies and 1983 Senate Bill No. 2071 with respect to the use of "taxable valuation."
57-16-07	Section 57-16-05 was repealed by S.L. 1983, ch. 608, § 22. The percentage approval requirement for the general fund account in a school district is found in Section 57-15-14.
57-26-07	See explanation for Section 2-03-14.
57-30-02	See explanation for Section 2-03-14.
57-30-04	See explanation for Section 2-03-14.
57-38-35	Section 57-38-36 was repealed by S.L. 1983, ch. 637, § 1.
57-38-61	Section 57-38-52 was repealed by S.L. 1983, ch. 630, § 2.
57-39.2-23	Section 1-01-49 defines "state" and "United States" as used in the Century Code as including the District of Columbia and the territories. The job insurance division is the present equivalent of the unemployment compensation division.
58-04-09	Title 16, except for nine sections, was repealed in 1981 when Title 16.1 was enacted. Those nine sections were placed in Title 16.1 so that no provisions remain in Title 16. Section 16.1-05-06 provides the procedure for challenging the right of a person to vote.
58-14-01	See explanation for Section 2-03-14.
60-04-03.1	See explanation for Section 2-03-14.
60-04-05	See explanation for Section 2-03-14.
61-02-61	See explanation for Section 2-03-14.
61-02-68.11	Section 61-02-50 was repealed by S.L. 1983, ch. 676, § 38.
61-02-72	As part of the comprehensive insurance code revision enacted in 1983, all insurance company investment provisions were consolidated into Section 26.1-05-19. Section 61-02-72 was amended during 1983 but did not reflect the consolidation of investment provisions.
61-24.4-09	When Section 61-24.4-09 was enacted in 1983, Section 57-51.1-07(2) allocated 10 percent of oil extraction tax development fund to the State Water Commission. A different bill also approved in 1983 amended Section 57-51.1-07 to delete the former subsection 1 and to redesignate the former subsection 2 as subsection 1. The present subsection 2 allocates 90 percent of the tax to the state's general fund.
65-01-01	See explanation for Section 2-03-14.
65-01-02(9)	See explanation for Section 2-03-14.
65-01-08	See explanation for Section 2-03-14.
65-05-06	See explanation for Section 2-03-14.
Repeals	
14-02-11	Section 14-02-11 is repealed because it duplicates Section 14-02.4-01 as contained in the Human Rights Act, enacted by S.L. 1983, ch. 173.
15-08-01.1	Section 15-08-01.1 requires that 50 percent of the oil and gas bonus payments on common school lands received by the Board of University and School Lands must be apportioned and distributed among the common schools for their maintenance based on student population. The section is repealed because an amendment to the Constitution of North Dakota approved in 1982 provides that the proceeds of all bonuses, or similar payments, made upon the leasing of coal, gas, oil, or any other mineral interests under, or reserved after sale of, grant lands for the common schools or institutional lands must be deposited in the appropriate permanent trust fund as created pursuant to constitutional requirements.
25-10-04	Section 25-10-04, enacted in 1965, transfers control of the State Hospital from the Director of Institutions to the Mental Health and Retardation Division of the Department of Health. In 1981 the bill establishing the Department of Human

North Dakota Century Code Section	Reason for Change
	Services amended Section 25-10-04 to transfer control of the State Hospital to the Department of Human Services. Chapter 25-10 establishes the Mental Health Division of the Department of Human Services. Section 25-10-04 is repealed because the bill places the provision concerning control of the State Hospital into the statute establishing the State Hospital, Section 25-02-01.
50-02-02	Section 50-02-02 was purportedly repealed by 1983 Senate Bill No. 2249 (S.L. 1983, ch. 172). Although the title of the bill listed the section as being repealed, the bill did not contain a repealer clause.
54-27.1-10	Section 54-27.1-10 is repealed because it is the only remaining section in the Federal Aid Coordinator Chapter, which was repealed on a section-by-section basis by S.L. 1983, ch. 570, § 13.
54-46-03.1	Section 54-46-03.1 authorizes the transfer of records management functions from the Secretary of State to the Office of Management and Budget pursuant to an agreement, which was executed on July 1, 1983. The section is repealed because this bill amends Chapter 54-46 in recognition of the accomplished transfer.
57-15-10(13)	Section 57-15-10(13) refers to a tax levy which was repealed by S.L. 1983, ch. 465, § 2. Section 57-15-10(13) is repealed because Section 40-46-02 covers what Section 40-46-02.1 covered, and Section 57-15-10(12) applies.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Council by law appoints a Legislative Audit and Fiscal Review Committee as a division of its Budget Section. The committee was created "for the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the legislative assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of this state." (NDCC Section 54-35-02.1).

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

The Lieutenant Governor by law serves as chairman of the Legislative Audit and Fiscal Review Committee. In addition to Lt. Governor Ernest Sands, other committee members were Representatives Theodore A. Lang, Olaf Opedahl, Allen Richard, Royden D. Rued, and Wilbur Vander Vorst; and Senators James A. Dotzenrod, Jerry Meyer, L. L. Naaden, Harvey D. Tallackson, and Stanley Wright.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

During the interim the State Auditor and independent accounting firms presented 61 audit reports. An additional 81 audit reports were filed with the committee but were not formally presented. The committee's policy is to hear only audits of major agencies and audit reports containing major recommendations; however, an audit not formally presented could be heard at the request of a committee member or members.

The committee was assigned three studies. House Concurrent Resolution No. 3037 directed a study of the feasibility of appropriating to the agricultural commodity promotion agencies all or a portion of the interest earned on the commodity assessments collected by those agencies. House Concurrent Resolution No. 3043 directed a study of all state veterans' benefit programs to determine the feasibility, desirability, and fiscal impact of extending those benefits to all honorably discharged personnel. House Concurrent Resolution No. 3072 directed a study of the functions and purposes of revolving funds, with emphasis on assessing their effectiveness in addressing their intended objectives.

INTEREST EARNED ON COMMODITY ASSESSMENT FUNDS

Background

House Concurrent Resolution No. 3037 directed a study of the feasibility of appropriating to the agricultural commodity promotion agencies all or a portion of the interest earned on the commodity assessments collected by those agencies and to identify other state agencies which perform services for the agricultural commodity agencies, the nature of those services, and to fix a reasonable charge for those services.

During the 1973-75 interim the Budget Committee "A" (Legislative Audit and Fiscal Review Committee) conducted a study of the handling of interest earned on dedicated funds on deposit in the state treasury. The committee recommended a bill which provided that agencies operating entirely from special funds and maintaining an average special fund balance in excess of $300,000 would receive 90 percent of the interest earned on amounts in excess of the $300,000 minimum balance. The interest earned on the amount up to $300,000 and 10 percent of the interest earned on amounts over $300,000 would be a reimbursement to the state general fund for services rendered by the various state agencies and departments providing nonbilled services to the special fund agencies. During the legislative session the bill was amended to relate only to the State Highway Department, Game and Fish Department, and State Wheat Commission. However, legislative action was to indefinitely postpone the bill.

Since there are no provisions of state law requiring the State Treasurer as a matter of general policy to invest moneys on deposit in special funds in the state treasury separately for each agency and institution, earnings arising from the general cash account of the State Treasurer which constitute the accumulation of all moneys which have been deposited with him are deposited directly to the general fund except in certain instances. For example, earnings are credited to dedicated funds such as the state bonding fund, retirement funds, and the game and fish fund.

Analysis of Agricultural Commodity Promotion Agency Funds

During the interim the committee analyzed the cash balances, revenues, and expenditures for some of North Dakota's agricultural commodity promotion agency funds for the 1981-83 biennium. A summary of the analysis is as follows:

AGRICULTURAL COMMODITY PROMOTION AGENCIES
ANALYSIS OF CASH BALANCES
1981-83 BIENNIUM

Agency	Cash Balance July 1, 1981	1981-83 Biennium		Cash Balance June 30, 1983 1/
		Revenue	Expenditures	
Potato Council	$ 0	$ 555,842	$ 555,842	$ 0
Sunflower Council	290,067	500,058	749,281	40,844
Edible Bean Council	84,356	280,059	239,999	124,416
Dairy Promotion Commission	201,131	1,262,972	1,280,521	183,582
Wheat Commission	285,049	1,979,675	1,798,139	466,585
Beef Commission	79,743	541,451	516,407	104,787
Honey Promotion	15,059	26,307	24,213	17,153
Turkey Promotion	2,337	19,146	19,987	1,496
Milk Stablilization Board	109,945	345,896	300,057	155,784
Barley Council 2/	0	0	0	0
Total	$1,067,687	$5,511,406	$5,484,446	$1,094,647

1/ Cash balance is restated for expenditures through July 1983 that relate to the 1981-83 biennium.
2/ Newly formed on July 1, 1983.

The Office of Management and Budget (OMB) presented a report regarding the estimated interest that would have been earned by agricultural commodity agencies during the 1981-83 biennium. Assuming an annual 10 percent interest rate, the agencies would have earned the following estimated amounts in 1981-83:

Potato Council	$4,225
Sunflower Council	26,076
Edible Bean Counil	28,276
Dairy Promotion Commisson	30,140
Wheat Commission	90,674
Beef Commission	11,251
Honey Promotion	3,043
Turkey Promotion	634
Total	$194,319

The OMB report did not include an estimate of interest earned by the milk stabilization fund.

Agricultural Commodity Assessments Funds in Minnesota, Montana, and South Dakota

To provide the committee with additional information in regard to interest earnings of the agricultural commodity promotion agencies, the surrounding states were contacted to determine their treatment of these agencies.

Minnesota statutes provide for self-governing commodity research and promotion councils that may be established by a referendum of the commodity producers. There are currently nine councils that operate under the state statutes. These councils are funded by a checkoff program and the expenditure of funds must be consistent with the marketing order. The councils' funds are not deposited in the state treasury, and interest earnings accrue to the respective funds. The Department of Agriculture provides administrative and regulatory services which are charged to the councils.

Montana has four commodity groups representing five agricultural commodities. Each group has a checkoff program to find its marketing and research efforts. The interest earnings accrue back to the respective funds. Each group is charged for administrative expenses by the Department of Agriculture or the Livestock Department and for central services such as data processing, telephone services, and warrant and check writing by the Department of Administration.

South Dakota has three commodity groups that have a mandatory checkoff system, for which a refund may be obtained. Two of these groups, sunflower and dairy, have their funds deposited in the state treasury. These funds are invested by the State Investment Board along with other state funds and the interest accrues back to the respective fund. The South Dakota Wheat Commission deposits its funds outside of the state treasury. These commodity groups are charged for central services such as the writing of warrants and checks.

OMB Proposal

OMB presented a proposal, with the approval of the Governor, which stated that the interest earned on commodity assessment funds should go to the respective commodity groups, if those groups are willing to pay for the services provided to them by the state. The services provided to the commodity groups include accounting, printing, data processing, and legal services. OMB proposed that the commodity groups be charged 20 percent of the interest earned on the assessment funds to pay for these services, with the remaining 80 percent to be deposited to the credit of the respective funds.

Testimony

The committee heard testimony from various agricultural commodity agencies in regard to the OMB proposal and the agencies' interest in retaining the interest earned on commodity assessment funds. Among the agencies that testified were the Wheat Commission, Dairy Promotion Commission, Sunflower Council, Milk Stabilization Board, Barley Council, and Beef Commission, all of which supported the concept of commodity groups retaining the interest earned on their assessment funds. Also testifying in support of this concept were representatives of the Agriculture Coalition and the North Dakota Farm Bureau.

Recommendations

The committee recommends House Bill No. 1076 to allow agricultural commodity groups to retain 80 percent of the interest earned on their commodity assessment funds, with the remaining 20 percent to pay for services provided to the commodity groups by the state.

STATE VETERANS' BENEFIT PROGRAMS

Background

House Concurrent Resolution No. 3043 directed a study of all state veterans' benefit programs to determine the feasibility, desirability, and fiscal impact of extending those benefits to all honorably discharged military personnel. North Dakota has provided many benefits for veterans including veterans' aid, public employment preference, Veterans' (Soldiers') Home, tax reductions and exemptions, and educational assistance. The term "veteran" is often defined differently for the purpose of qualifying for many of these benefits.

Many benefit programs are available to wartime veterans but not to peacetime veterans. It is estimated that in North Dakota there are currently 56,000 wartime veterans and 13,000 peacetime veterans, broken down as follows:

Wartime Veterans

World War I	1,000
World War II	23,000
Korean conflict	11,000
Vietnam era	21,000
Total estimated wartime veterans	56,000

Peacetime Veterans

Service between Korean conflict and Vietnam era	8,000
Post-Vietnam era	4,000
Other peacetime	1,000
Total estimated peacetime veterans	13,000

Recommendations of Veterans' Organizations

The committee received testimony from various veterans' organizations, including the Department of Veterans Affairs, Veterans' Home, and the Veterans Coordinating Council, which represents the American Legion, Veterans of Foreign Wars, the American Veterans of World War II, Korea, and Vietnam (AMVETS), and the Disabled American Veterans. Also represented at various committee meetings were the Vietnam Veterans of America, Catholic War Veterans, and the County Veterans Service Officers.

The committee asked the Veterans Coordinating Council to make specific recommendations for the revision of eligibility for veterans' benefit programs. The Veterans Coordinating Council presented the following recommendations:

1. Change the definition of "veteran" to include peacetime veterans as well as wartime veterans.
2. Provide a separate definition for wartime veterans, similar to the previous definition of veteran.
3. Provide for veterans' benefit programs, such as the Veterans' Home and veterans' aid fund, to be made available to peacetime and wartime veterans.
4. When deemed necessary, provide veteran benefits on a preferential basis as follows:
   a. Disabled veteran.
   b. Wartime veteran.
   c. Veteran.
   d. Other eligible.
5. Continue to provide public employment preference benefits to wartime veterans only.

The recommendations made on behalf of the Veterans Coordinating Council were unanimously approved by the conventions of the Disabled American Veterans, Veterans of Foreign Wars, American Legion, and American Veterans of World War II, Korea, and Vietnam (AMVETS).

The Veterans Coordinating Council reported that its recommendations would have no significant fiscal impact on the state, even though veterans' benefits would be extended to include approximately 13,000 peacetime veterans. It was reported that the veterans' aid fund is doing well at this time because of the allowable interest rate being charged, the collection process, and careful underwriting, and that the fund would be capable of providing benefits to peacetime veterans without additional funding at least through the 1985-87 biennium. It was further reported that the changes being recommended that would affect the Veterans' Home would not have a significant fiscal impact because the fixed costs are about the same with a full bed capacity as they would be with partial capacity. The Veterans' Home reported an average vacancy rate of about 20 beds, and recommended giving priority to wartime veterans if the home began to operate at or near capacity should peacetime veterans be allowed admission to the home.

In addition to recommending that peacetime veterans be allowed admission to the Veterans' Home, officials of the home also recommended that the name of the home be statutorily changed from the "North Dakota Soldiers' Home" to the "North Dakota Veterans' Home" and that definitions be provided in the statutes for certain terms such as "domiciliary care" which are used in laws relating to the Veterans' Home.

Recommendations

The committee recommends Senate Bill No. 2089, based on the recommendations of the Veterans Coordinating Council and Veterans' Home to extend eligibility for certain veterans' benefit programs to peacetime veterans as well as to wartime veterans and would officially change the name of the North Dakota Soldiers' Home to the North Dakota Veterans' Home.

The bill provides for peacetime veterans to be eligible for the following major veterans' benefit programs which are currently available to only wartime veterans:

1. Veterans' aid loan fund.
2. Admission to the North Dakota Veterans' Home.
3. Educational assistance to dependent children.

The bill also provides a list of priorities for admission to the Veterans' Home, if the home is full and a waiting list fo admission is necessary.

Public employment preferences, as well as other veterans' benefits of a relatively minor nature such as the use of memorial rooms in county courthouses and property tax exemptions, would continue to be provided to only wartime veterans.

REVOLVING FUNDS

Background

House Concurrent Resolution No. 3072 directed a study of the functions and purposes of revolving funds, with emphasis on assessing their effectiveness in addressing their intended objectives. There are a number of revolving funds administered by various state agencies. The resolution states that since many of these revolving funds have continuing appropria-

tions, the Legislative Assembly does not review the operation of these funds on a biennial basis and in a period of severely limited state revenues there should be close scrutiny given to the operation of revolving funds.

The establishment of a revolving fund is authorized by legislative action, and the original allocation of resources to the revolving fund may be made through a transfer of assets of another fund, such as the general fund, intended as a contribution not to be repaid. A revolving fund is often established for the purpose of providing centralized services among the various departments or governmental units, thereby improving the management of resources.

Analysis of Revolving Funds

Examples of revolving funds in existence in the state at this time are:

1. Community water facility loan fund.
2. Seed Department revolving fund.
3. Developmentally disabled facility loan fund.
4. State school construction fund.
5. Veterans' aid fund.
6. Public utility valuation revolving fund.
7. Preliminary planning revolving fund.
8. Office of Management and Budget (OMB) operating funds, such as the central supply, central duplicating, and data processing funds.

Although some of the funds listed above are revolving funds in that expenses are offset by revenues, they were not included in the scope of the study because their expenses are subject to legislative appropriation. For instance, expenses of the Seed Department revolving fund and OMB's central duplicating and data processing funds are subject to legislative appropriation.

At the June 1983 meeting, the committee reviewed background information regarding numerous revolving funds, including all of those listed above. At the October 1983 meeting, the committee heard testimony from representatives of the State Auditor's office, OMB, and the Public Service Commission, and also from one of the sponsors of the study resolution.

The sponsor of the study resolution expressed concern that agencies can collect moneys from fees, etc., and then can spend those same funds without being subject to a specific legislative appropriation. The State Auditor testified that his office examines the statutory provisions for revolving funds during the course of its audits. He said his office determines whether or not the funds are being expended in accordance with those provisions.

The Public Service Commission (PSC) testified specifically in regard to the public utility valuation revolving fund. This fund was established in 1981 to cover the expenses of public utility valuation or revaluation, investigations, or proceedings. The actual expenses are paid by the utilities being investigated or involved in a hearing or proceeding and are deposited in the revolving fund. Prior to 1981 these collections were deposited in the general fund and expenditures were subject to appropriation. The PSC reported that the revolving fund provides a much better working arrangement, since the funds do not have to be appropriated each biennium and the PSC does not have to appear before the Emergency Commission each time the expenses exceed the amounts estimated and appropriated. The PSC also reported that the fund is audited by the State Auditor during the course of his audit of the PSC.

At the February 1984 meeting, the committee reviewed a detailed report regarding the community water facility loan fund. The community water facility loan program was created in 1977 and is used primarily for supplementary financing in conjunction with federal moneys available through the Farmers Home Administration for the construction, enlargement, extension, or other improvements of community water facilities. Moneys in the revolving fund may only be expended subject to specific statutory provisions. An independent CPA firm, during the course of its audit of the Bank of North Dakota, determines whether or not the moneys are being expended in accordance with those provisions.

The committee noted that the major advantages of having revolving funds subject to legislative appropriation is for the Legislative Assembly to have control over the number of employees to be hired, the amount of expenditures, and the general operations of the fund. As for some of the minor revolving funds not subject to legislative appropriation, the expenses of a fund providing services are determined by the extent of demand for the services from other departments or agencies; therefore, the use of fixed dollar budgets may not be appropriate for them. Expenditures of a revolving fund not subject to appropriation are limited only to the extent of the amount of revenues received by the fund.

A major disadvantage discussed by the committee of subjecting revolving funds to specific legislative appropriation is that if expenses of a revolving fund are subject to appropriation, the total government appropriation is overstated due to the "double reporting" of certain expenses. For example, the total appropriation to the Central Data Processing Department is duplicated by the appropriations to individual departments for their anticipated data processing expenses.

Recommendations

The following is a list of general criteria developed and recommended by the committee as guidelines for the Legislative Assembly to follow in its handling of revolving funds:

1. Major revolving funds, such as for central data processing and the motor pool, should be subject to specific legislative appropriation.
2. The approval of new positions to be paid from revolving fund moneys should be subject to appropriation control, i.e., new positions could not be created without legislative approval.
3. Personnel hired with revolving fund moneys should be subject to the guidelines of the state personnel system as well as being subject to legislative approval.
4. Revolving funds should be subject to periodic audits, conducted either by the State Auditor or independent accounting firms.
5. The Legislative Assembly should periodically review the operating balances of revolving funds to determine the possibility of transferring any surplus to the general fund.
6. Each revolving fund subject to legislative appropriation should include a list of anticipated revenues and expenditures in a biennial budget request.
7. Since the moneys eventually return to the funds and remain as assets of the state, revolving loan funds, such as the developmentally disabled facility loan fund and the nursing

home loan fund, once created, should not be subject to the limits of legislative appropriation.

STATE AUDITOR

Audit of the State Auditor's Office

North Dakota Century Code Section 54-10-04 requires the Legislative Assembly to provide for an audit of the State Auditor's office. The Legislative Council contracted with Eide Helmeke & Co., certified public accountants, for such an audit for the biennium ended June 30, 1983. The firm presented its audit report at the committee's February 1984 meeting. The report included recommendations that formal evaluations be completed on every State Auditor employee on at least an annual basis and that certain procedures be revised to improve audit efficiency.

Major Audits and Recommendations

The State Auditor presented audit reports of major agencies and reports containing major recommendations to the committee. Among those presented was the audit report of the State Highway Department for the year ended June 30, 1982.

The State Auditor said the Highway Department audit report contained a disclaimer opinion; in other words, conditions existed which precluded the auditors from forming an opinion on the fairness of the financial statements taken as a whole as of June 30, 1982. The State Auditor reported that restrictions on the scope of his examinations were imposed by inadequacies in the Highway Department's accounting records and their inability to produce sufficient, competent evidential matter to support their financial statements.

At a subsequent meeting, the committee heard a presentation by the Highway Department regarding its progress in the implementation of the State Auditor's recommendations. The department reported that it plans to: replace the current 14-year-old accounting system by converting to the statewide accounting and management information system; correct deficiencies noted in the State Auditor's report; and account for and report Highway Department accounting data in the same manner as all state agencies.

Responses to Audits and Committee Recommendations

In accordance with a request of this committee from a previous interim, the audit reports presented by the State Auditor included a section which contained the audited agencies' written responses to the various audit recommendations. The request was made due to a concern of the committee that some agencies were not complying with the auditor's recommendations.

The committee reinforced committee action of previous interims that requested the State Auditor to determine whether agencies have complied with the auditor's recommendations within six months after a report has been accepted by the committee.

Audits of Federal Funds

At the October 1984 meeting, the State Auditor discussed the single audit concept, an organization-wide financial and compliance audit which is conducted in lieu of the traditional grant-by-grant audits conducted in the past. The purpose of the single audit concept is to improve the financial management of state and local governments with respect to federal financial assistance programs and to promote the efficient and effective use of audit resources. This is to be done by ensuring that federal departments and agencies, to the maximum extent practicable, rely upon and use audit work done by state or local government auditors.

The State Auditor reported that Congress has recently passed legislation which would require agencies receiving federal funds to be audited annually, but permits states to conduct the audits less frequently if this is the current practice. The State Auditor's office plans to introduce legislation to the 1985 Legislative Assembly which would make as a matter of law the current biennial audit guidelines. The State Auditor said his office anticipates requesting funding for 13 additional auditors for the 1985-87 biennium if it is to conduct these audits every two years. He said a considerable number of additional auditors would be necessary if the audits had to be performed every year.

The committee encourages the 1985 Legislative Assembly to approve legislation which would require the State Auditor to perform audits of agencies receiving federal funds on a biennial basis, except in the case of special requests from the Governor or his committee.

STATE HOSPITAL

Writeoff of Accounts Receivable

At its October 1983 meeting, the committee heard a report pursuant to Section 25-09-02.1 of the North Dakota Century Code relating to the writeoff of accounts receivable at the State Hospital. The report by the State Hospital for the year ended June 30, 1983, indicated that $12,241,393 of accounts receivable had been written off. The committee passed a motion accepting the report.

A similar report was submitted by the State Hospital and accepted by the committee at the October 1984 meeting. The report was for the year ended June 30, 1984, and indicated that $27,099,137 of accounts receivable had been written off. The State Hospital reported that each of the accounts written off had been individually reviewed and determined to be uncollectible.

Recovery of Costs of Nonresident and Indian Patients

The committee expressed concern that the State Hospital recovers a very small portion of the costs of nonresident and Indian patients. The State Hospital reported that the vast majority of nonresident patients are admitted from local settings. When the patient is released from the hospital, the hospital field personnel try to contact the patient at his release address or through his listed employer. If the patient has left the area, the patient is classified as a "skip" and assigned to an outside collection source. The State Hospital reported that very little recovery, if any, is realized from these transient cases.

The State Hospital also reported that very rarely is any payment received from on-reservation Indian residents, and that the federal government does not fund the costs of Indian patients at the State Hospital. The hospital estimated that approximately 15 percent of the patient population at the State Hospital are Native Americans. The committee agreed that something should be done to encourage the federal government, Bureau of Indian Affairs, and any other applicable units of government to fund at least a portion of the expenses of Indian patients.

At the October 1984 meeting, the committee request-

ed the Legislative Council staff to contact the agency in charge of Indian health services and ask for its policy in regard to who is responsible for payment of the costs of Indian patients at the State Hospital. The committee plans to meet again in December 1984 during the Legislative Assembly's organizational session to review the information compiled by the Legislative Council staff.

OTHER ACTION AND DISCUSSION

Also during the interim, in addition to the assigned studies, the committee reviewed a report prepared by the Legislative Council staff regarding the extent of liability of employees of the state and political subdivisions, and reviewed a Legislative Council report regarding the fringe benefits available to employees of the Highway Patrol.

LEGISLATIVE PROCEDURE AND ARRANGEMENTS COMMITTEE

The Legislative Council is directed by North Dakota Century Code Section 54-35-11 to make all necessary arrangements, except for the hiring of legislative employees to work during the regular session, to facilitate the proper convening and operation of the Legislative Assembly. This responsibility was assigned to the Legislative Procedure and Arrangements Committee. The committee concentrated on supervising the continuation of the renovation of the legislative wing of the State Capitol authorized by House Bill No. 1003 (1979) and Senate Bill No. 2002 (1981), reviewing and updating legislative rules, reviewing procedures for the dissemination of legislative documents during sessions, and making other plans and arrangements for the 1985 Legislative Assembly.

Committee members were Representatives Richard J. Backes (Chairman), Tish Kelly, William E. Kretschmar, Corliss Mushik, Jim Peterson, Oscar Solberg, and Earl Strinden; and Senators William S. Heigaard, Gary J. Nelson, David E. Nething, and Rolland W. Redlin.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

RENOVATION OF THE LEGISLATIVE WING

Background

Recent history of the renovation of the legislative wing of the State Capitol dates back to the 1977 Legislative Assembly, which authorized the construction of the new judicial wing-state office building. The appropriation measure authorizing the construction of the new wing provided that additional space be made available either within the Capitol or in the building to be constructed for no fewer than six legislative hearing rooms and one large legislative hearing room. During the 1977-78 interim, the Legislative Procedure and Arrangements Committee contracted with an architect to develop plans for renovating the legislative wing and other portions of the Capitol which were made available for the legislative branch. The "large hearing room" provided for in the 1977 legislation was included in the design for the new wing, and that room is now called the Pioneer Room. Several new committee rooms were made possible on the ground floor of the Capitol by moving the Legislative Council staff to the offices vacated by the Supreme Court on the second floor.

The 1979 Legislative Assembly appropriated funds for construction of an elevator connecting the ground floor with the top floor of the former Supreme Court Library, and for the renovation of the House and Senate chambers, including recarpeting and built-in filing cabinets and removing four desks on each side of the House chamber to provide additional access to members' seats.

Senate Bill No. 2002 was introduced in the 1981 Legislative Assembly as the result of additional study by the Legislative Procedure and Arrangements Committee during the 1979-80 interim. The 1981 Legislative Assembly approved an appropriation of $1,875,000 for the renovation of the legislative wing, $1,200,000 of which was appropriated from the capitol building fund. This fund was created by the Enabling Act, passed by Congress in 1889, which dedicated certain lands, the proceeds of which can only be spent for public buildings for legislative, executive, and judicial purposes. Senate Bill No. 2002 also appropriated $675,000 from the state general fund.

During the 1981-82 interim, major portions of the legislative wing were renovated. A new elevator was constructed from the House chamber to the House balcony. Committee rooms were created on the ground floor by remodeling space previously used for a cafeteria and offices of the executive branch and the Legislative Council staff. New offices were created for the Speaker of the House and the Chief Clerk on the balcony level. Other features of the renovation effort included renovated or new spaces provided for legislative study rooms, telephone clerks, committee clerks and stenographers, legislative leaders, and the press. Another major feature of the renovation effort was the purchase of new electronic voting systems, including computer interfacing and high speed printers for both chambers.

Time and resources did not permit completion of all of the features of the renovation project which had been anticipated. At the beginning of the current interim, committee members found much of the woodwork throughout the legislative wing needed refinishing, the benches in Memorial Hall were covered with badly worn leather, and the lighting in the some rooms was inadequate and fixtures were in need of replacement. Approximately $59,000 of the funds appropriated in 1981 remained for the committee's disposition this interim.

Refinishing of Woodwork

The committee's contract architect advised that the woodwork in the Prairie Room, the foyer to the Prairie Room, the Legislative Council reception area and the elevator lobby on the second floor, the Legislative Council conference room, the former Supreme Court case conference room, and woodbase and doors and frames throughout the legislative wing were in need of work to preseve and protect them, much of the wood of which was unique and from the original construction of the State Capitol. In addition, much of the hardware throughout the legislative wing, including hinges and door closures, was badly in need of repair or replacement. The committee let bids on the projects outlined by the architect and accepted bids for the refinishing of woodwork on the ground floor and the repair or replacement of hardware items throughout the legislative wing. Refinishing of woodwork on the first and second floors was delayed because of a lack of funds.

Bench Reupholstery in Memorial Hall

There are five benches on each side of Memorial Hall immediately outside the House and Senate chambers. These benches were covered with red leather at the time of construction of the State Capitol over 50 years ago. Several of the benches showed wear and some of the leather had either worn through or had been ripped. The committee contracted with Roughrider Industries (a division of the State Peniten-

tiary) to have all of the benches reupholstered with leather matching the original.

Sound Systems and Tables in Appropriations Rooms

The chairman of the House Appropriations Committee reported problems during the session with the sound system in the Roughrider Room. As the House Appropriations Committee is the largest legislative standing committee, problems have also been experienced with the configuration of commmittee tables in the Roughrider Room. It was noted some committee members had to have their backs to either the chairman or witnesses who are testifying before the committee.

The committee approved the purchase of new tables for the Roughrider Room which are in the shape of an "E". The committee also approved a new sound system, with table mounted fixed microphones, for the Roughrider Room. As there were not sufficient funds remaining from the renovation appropriation, and inasmuch as the sound system for the House Appropriations Committee Room was determined to be a problem not necessarily related to the renovation project, the commmittee approved the expenditure of Legislative Assembly appropriated funds for the new sound system for the House Appropriations Committee Room. The committee also approved the upgrading of existing equipment for the Senate Appropriations Committee sound system and the adding of a press feed in each of the Appropriations Committee rooms.

Legislative Wing Lighting

Several problems with lighting systems throughout the legislative wing were pointed out during the course of the committee deliberations. Lighting in the Prairie Room was found to be inadequate during the 1983 Legislative Assembly. Working with an engineering consultant, the committee reviewed several other electrical projects, including the installation of new lights in the ceiling in Memorial Hall to accentuate the woodwork, the repair of light fixtures on the balcony in the Dakota Room and in legislative stairwells, and the installation of dimmer switches for the lights in both chambers.

Recommendation

The committee recommends Senate Bill No. 2090 to appropriate $187,200 from the interest and income fund of the capitol building fund for the refinishing of woodwork and other improvements on the first and second floors of the legislative wing. Although the bulk of the funds would be needed to strip and refinish the original wood paneling on the second floor, other items for which funding would be provided include electrical work in several areas, new circular committee tables in the Harvest Room and Prairie Room, and new bulletin boards for schedules and agendas to be located outside each committee room. As it is intended the project would begin immediately following the 1985 Legislative Assembly, the bill contains an emergency clause.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. Suggestions for rules changes came from committee members and from a memorandum prepared by the Chief Clerk of the House of Representatives upon conclusion of the 1983 Legislative Assembly.

Personal Privilege

Committee members expressed concern that the policy on points of personal privilege should be spelled out. It was noted that, although the rules of neither house provide any guidance on points of personal privilege, a tradition has developed by which members use points of personal privilege to speak on pending legislation, personal concerns, and a wide variety of other matters. The committee reviewed information on how other states handle the question of points of personal privilege. Mason's Manual of Legislative Procedure has several sections providing guidance on the appropriateness of this procedural matter. The committee recommends creation of Senate Rule 310.1 and House Rule 310.1 to provide that a member raising a question of personal privilege must confine any remarks to those which concern the member personally, and when speaking under a personal privilege, a member has no right to chastise any other member. The new language is derived in part from Section 222(3) from Mason's Manual of Legislative Procedure.

Divided Questions and Demands for Roll Call Votes

A difference of opinion exists over whether a motion to divide the question has the same effect as an amendment or whether when a question is divided each vote on a portion of a measure is the final action required for passage of that portion. During the 1983 Legislative Assembly, the Senate Rules Committee requested an Attorney General's opinion, and the resulting opinion said such a motion was an amendment. The rules of the North Dakota Senate and House and Mason's Manual of Legislative Procedure do not conclusively answer the question as to whether the effect of dividing the question on a bill is the same as an amendment or whether each vote represents a final disposition of a portion of the measure. Staff research indicated that two sources which are not binding on the North Dakota Legislative Assembly, Newly Revised Robert's Rules of Order and Cushings on Legislative Assemblies, indicate that separate and distinct propositions are treated and voted upon as though they were introduced in that form, which would indicate a final disposition.

The committee recommends the creation of a new subdivision to subsection 1 of Senate and House Rule 315 and proposed amendments to Senate and House Rule 316 to provide that a motion to divide the question on passage of a measure has the same effect as an amendment. In addition, the rules amendments would provide that when the question is divided each proposition requires a majority vote of the members present for adoption. Present rules permit any member to request that a question be divided and the committee recommends that the rules require that any member of the Senate may have a question divided if supported by five other members and any member of the House may have a question divided if supported by 11 other members. The committee recommends changes be made to Senate and House Rule 317 to require the same support if a member wishes to require a recorded roll call vote on matters for which such votes are not otherwise required. The present rules require a recorded roll call vote if demanded by one-sixth the members present, and the committee decided a fixed number would make it easier to determine if the requirement had been met.

Elimination of Routine Motions

Committee members expressed concern that much time was wasted before crossover and toward the end of legislative sessions by routine motions to suspend the rules to permit measures to be deemed properly engrossed and placed on the calendar. During the 1983 Legislative Assembly, after the 32nd day and before crossover, the House never used a motion suspending the rules and deeming a measure properly engrossed and placing it on the calendar, but the Senate used that motion eight times. After the 55th legislative day, the House had 17 motions suspending the rules and deeming a measure properly engrossed and placing it on the calendar, while the Senate used that motion 123 times during that period.

The committee recommends the creation of Senate and House Rule 332.1 and proposed amendment to Senate and House Rule 330 and subsection 2 of Senate and House Rule 601 to provide that after the 32nd legislative day, bills in the house of origin would be deemed properly engrossed upon adoption of amendments and after the 55th legislative day, all measures would be deemed properly engrossed upon adoption of amendments. In addition, the new language would provide that after the 55th legislative day, all bills and resolutions received from the other house for concurrence which have previously passed in the house receiving them would immediately be placed on the calendar for second reading and final passage.

Reconsideration of Amendments

Some legislators have expressed the opinion that it should take the same vote to reconsider an amendment on the same day as it takes to approve that amendment. Under existing rules, it takes a simple majority of those present to adopt an amendment on the sixth order, but it takes a majority of the members-elect to reconsider that amendment through the next legislative day and two-thirds of the members-elect to reconsider that amendment after the end of the next legislative day.

The committee recommends amendments to Senate and House Rule 315 and Senate and House Rule 341 to provide that a motion to reconsider adoption of an amendment requies only a majority vote of the members present if made before the end of the next legislative day.

Excusing Members from Voting

Committee members expressed concern that existing rules on excusing members from voting require "nay" votes to allow the members to vote. To avoid this confusion, the committee recommends amendments to Senate and House Rule 319 to provide that when a member asks to be excused or declines to vote, the question to be asked is whether the member should be permitted to vote instead of asking whether the member should be excused from voting. Therefore, if another member wishes to permit a member to vote, an affirmative vote would be called for.

Reading of Bills

Senate and House Rule 322 contains language from the Constitucion of North Dakota concerning the reading of bills and resolutions in each house. Existing language provides that the first reading of each measure may be by title only, unless on first reading a reading at length is demanded. The second reading must be at length. It was noted what constitutes a "reading" is open to interpretation, but that a literal reading of these rules would not be practical. A constitutional amendment approved at the 1984 general election, which will not be effective until the 1987 Legislative Assembly, will change this language to require that every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present. Discussion in the committee involved the time consumed even in the reading of lengthy titles to some bills. The committee recommends amendments to Senate and House Rule 322 to retain the requirement that the first and second reading may not be on the same day, but to delete the language concerning the first reading may be by title only unless on first reading a reading at length is demanded and the language that the second reading must be at length. Members of the committee observed that the constitutional requirements remain.

Smoking in House Committee Rooms

House Rule 511 provides that there shall be no smoking in committee rooms. It was observed that this rule has not been enforced by most committee chairmen. The committee recommends the amendment of House Rule 511 to provide that each committee shall decide if smoking by members only is to be permitted in the committee's room, and each committee that permits smoking by members shall, to the extent possible, designate a smoking section of the room.

Posting Notice of Committee Meetings

Senate and House Rule 203 now provides that the Secretary of the Senate and the Chief Clerk of the House must prepare a bulletin board on which to post a list of committee meetings and any other announcements or notices. Because notices of committee meetings are now placed on computer video screens instead of a bulletin board, the committee recommends amendments to these rules to simply require that these legislative officers post appropriate notices of committee meetings and any other announcements or notices.

Printing and Distribution of Journals

Senate and House Rule 204 now provides for the numbers of corrected daily journals which are to be prepared upon conclusion of each legislative session. These permanent journals are distributed to legislators, libraries, and judges. Because the rules have not been amended to keep pace with the number of district judges in the state, the committee recommends amendments to Senate and House Rule 204 to provide the correct number of journals to be printed. The committee also recommends the repeal of Joint Rule 602, which provides for the appointing of a three-member committee from each house to develop plans for distribution of journals. These committees have not been appointed in recent years, and the committee recommends an amendment to Joint Rule 604 to contain language that bill room employees shall distribute copies of daily journals to conform to existing practice. In addition, the committee recommends that legislators no longer be asked whether they wish to send journals to constituents, but that legislators upon request may be permitted to send daily journals to as many as 15 persons.

Clearing Floor Before Session

Senate Rule 205 provides that the Sergeant-at-Arms must clear the floor of the Senate for 15 minutes before the Senate convenes each day and House Rule 205 provides that the Sergeant-at-Arms in that house must clear the floor 30 minutes before the convening of the session each day. Both rules contain exceptions for legislators, legislative employees, and members of the press. It was noted these rules create ill will and are difficult to enforce. However, some legislators support this policy and want it continued. The committee recommends the amendment of Senate and House Rule 205 to provide an exception for guests of legislators to make it clear that each legislator may at his or her invitation have other persons on the floor during the times preceding the convening of daily sessions.

Communications in Journals

Senate and House Rule 302 now provides that petitions and communications are not to be printed in the journal except on motion of the respective house. It was noted many communications from the Governor are placed in the journal without a motion. To bring the rules into conformity with practice, the committee recommends the amendment of Senate and House Rule 302 to provide an exception for official communications from the executive and judicial branches of state government so that those communications would be printed in the journal without the necessity of a motion.

Previous Question

The committee reviewed concerns relating to the fact that some members have spoken on an issue and then immediately moved the previous question, which, if successful, has prevented others from speaking on the same issue. Another concern expressed is that after a motion to end debate has carried, there should be no points of personal privilege or any other discussion except for points of information or inquiry until the vote is recorded. The committee recommends the creation of Senate and House Rule 312.1 to provide that if a motion calling for the previous question or any other motion to end debate carries, the question must be put immediately and no member may speak except on a request for information or on a parliamentary inquiry. In addition, these rules would provide that a member may not move the previous question if that member is debating the issue before the respective chamber.

Floor Amendments in House on Sixth Order

Although the Senate allows amendments from the floor, House Rule 328 prohibits floor amendments on second reading without unanimous consent except for amendments to the title of bills or resolutions. It was called to the committee's attention that there is no prohibition on floor amendments when a measure is being considered on sixth order. Therefore, the committee recommends an amendment to House Rule 328 to add language to specifically provide that floor amendments may not be considered on sixth order without unanimous consent of the House.

Bill Introductions by Leaders

Senate and House Rule 402 prohibits members from introducing more than three bills as prime sponsor after the 10th legislative day without the approval of the Committee on Delayed Bills. The committee recommends that these rules be amended to provide an exception to the three bill rule for the majority and minority leaders.

Committee Recommendation Announcements

Senate Rule 601 and House Rule 601 provide that when a measure is on the calendar on the 10th, 11th, or 14th order of business, the Secretary of the Senate or the Chief Clerk of the House must again announce the committee recommendation concerning that measure. The 10th order of business is the consent calendar, the 11th order of businss is second reading of house of origin bills and resolutions, and the 14th order of business is the second reading of bills and resolutions from the other house. The committee recommends the deletion of the requirement that the committee recommendation be announced because the daily calendars supply that information.

Conference Committee Jurisdiction

Joint Rule 301 provides that conference committees must confine their conferences and recommendations to consideration of the stated difference which gave rise to the appointment of the conference committee. It was noted the presiding officer is often placed in a dilemma when a member attempts to have that portion of the rule enforced. It was also noted that conference committees often reflect major caucus policy matters and flexibility may be desirable. The viewpoint was also expressed that if new ideas are taken up by a conference committee, there should be an opportunity for the public to be heard on those new ideas. The committee recommends the amendment of Joint Rule 301 to replace the language on consideration of "stated difference" to restrict conference committees to the "general differences" which gave rise to the appointment of the conference committees.

LEGISLATIVE DOCUMENT DISSEMINATION

The bill status system began in 1969 as an in-house computerized operation to provide day-old hardcopy information concerning the progress of bills through the legislative process. The bill status system has grown to an on-line system providing up to the minute information concerning the status of bills and resolutions for use by legislative personnel and outside users. Although most outside users are other state agencies, a number of private parties have gained access through arrangements with the Legislative Council and the Central Data Processing Division of the Office of Management and Budget. During the 1983 session, an experimental dial-in system was used by one Bismarck law firm. A number of outside users have requested access for the 1985 Legislative Assembly with larger users willing to pay for dedicated ports while smaller users requesting the dial-in system. The committee established a policy of continuing to provide direct line bill status accessibility to outside users provided the users pay the full cost of such use and provided the users have equipment which is compatible with that used for the system.

During the 1983 session, the Legislative Assembly provided bills, journals, and bill status reports to 30 libraries throughout the state which had requested this service. The service was very well received and libraries reported a good deal of use of the documents by patrons of the libraries. Several additional libraries have requested this service for the 1985 session, and the committee is expanding the service so that a total

of 46 libraries will receive legislative documents on a daily basis throughout the 1985 session.

In recent years the Legislative Assembly has provided two incoming WATS lines for constituents to leave messages or get information during legislative sessions. Some constituents have complained in recent years that the lines are often busy and it is difficult to use the toll-free lines. Therefore, the committee approved doubling the number of incoming WATS lines from two to four for the 1985 session.

During the 1983 session, the Legislative Assembly had four committee hearing monitors which displayed standing committee schedules on a rotating basis. Two of these monitors were located near the first floor information kiosk in Memorial Hall and two of the monitors were located near the west end of the ground floor hallway, with one monitor in each pair of monitors reflecting the committee hearing schedule for each house of the Legislative Assembly. As part of the legislative wing renovation project, the wiring is in place for four additional monitors, two near the vending machines located near the Roughrider Room and two near the Harvest Room on the ground floor. The committee approved the purchase of two additional committee hearing monitors for installation near the Harvest Room.

The committee authorized the Employment Committee to hire someone to operate the bill room prior to the convening of the session. This practice, which was started prior to the 1979 Legislative Assembly, permits the early distribution of prefiled bills.

SPECIAL OCCASIONS AND AGENDAS

Tribal Affairs Address

Representatives of Indian tribes in North Dakota requested the opportunity to have a spokesman for them appear before the Legislative Assembly to describe from their perspective the current status of the relationship between the tribes and the State of North Dakota. Although it would not be intended that the address would focus on specific pieces of legislation, the intent would be that the address would clarify areas of concern that need further work and that would be relevant to the Legislative Assembly, including areas of mutual cooperation and jurisdictional issues. One of the intended results of such an address would be improving tribal-state relations by providing a means of direct communication between tribal governments and the Legislative Assembly. The committee extended an invitation to representatives of the Indian tribes to have a spokesman for the tribes address each house of the Legislative Assembly early in the 1985 session.

Military Exchange Program

A representative of Grand Forks Air Force Base appeared before the committee and proposed a military-state government leadership exchange program. The purposes of the program would include acquainting senior military leaders stationed in North Dakota with the people and processes of state government, acquainting state government leaders with the operations and personnel of the major military installations in the state, and fostering a closer personal relationship between military leaders and government leaders in the state. The committee extended an invitation to representatives of the Grand Forks Air Force Base inviting military personnel to come for a day during the 1985 Legislative Assembly and stating that the legislative leaders will participate with and encourage other legislators to participate with the military personnel in the exchange program.

Organizational Session Agenda

The committee approved a tentative agenda for the 1984 organizational session. Although similar to agendas approved for prior organizational sessions, the agenda approved this year reduces the number of joint sessions in order to save time. In addition, the tentative agenda calls for adjournment before noon on the third day of the organizational session to accommodate a meeting of the Budget Section at which time the executive budget for the 1985-87 biennium will be received.

State of the Judiciary Address

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the North Dakota Supreme Court for the State of the Judiciary Address during the first week of the 1985 Legislative Assembly.

Physical Fitness Day

The committee was asked by an organization of physical education teachers for authorization to conduct a physical fitness day during the 1985 Legislative Assembly, at which time health screening and other physical fitness tests would be made available. The committee directed the staff to prepare a concurrent resolution for introduction by the leaders in the 1985 session to declare physical fitness day for health screening purposes and other demonstrations.

Report of the Legislative Compensation Commission

The committee requested the chairman of the Legislative Compensation Commission to present the report of the commission to each house the first week of the 1985 Legislative Assembly.

Four-Day Break

The committee discussed the desirability of scheduling a four-day weekend halfway through the 1985 Legislative Assembly. As President's Day, an official state holiday, falls on the Monday preceding crossover, the committee directed the Legislative Council staff to prepare a rules amendment for consideration by the rules committees of both houses providing for a four-day weekend after crossover. Members of the committee expressed the opinion that the Legislative Assembly should plan to work on President's Day.

MISCELLANEOUS ADMINISTRATIVE MATTERS

Internship Program

Beginning in 1969, the Legislative Assembly has sponsored a legislative internship program in cooperation with the graduate school at North Dakoa State University and the graduate school and law school at the University of North Dakota. The legislative internship program has provided the Legislative Assembly with the assistance of graduate school students and law school students for a variety of tasks, while at the same time providing the students with a valuable educational experience. The committee reviewed the program and approved its continuation for the 1985 Legislative Assembly. The two universities were requested to select their interns by September 15, 1984, after which the four leaders from the prior legislative session interviewed those interns who were interested in serving as caucus interns. Training sessions for the interns were held on the campuses of

the two universities by the director of the internship program and the director of the Legislative Council. Interns will be provided their assignments and given additional training and orientation prior to the 1985 session.

Tour Guide Program

The committee approved the continuation of the legislative tour guide program. Started in the 1977 Legislative Assembly, the Legislative Council staff has hired a person to serve as a tour guide to coordinate high school tours of the Legislative Assembly during sessions.

Chaplaincy Program

The committee reviewed the chaplaincy program in use by each house during sessions. In cooperation with the Bismarck Ministerial Association, the Senate and House of Representatives have chaplains open daily sessions with a prayer. Although the Bismarck Ministerial Association has provided a schedule of clergymen to provide opening prayers, a tradition has developed of permitting individual legislators to preempt the scheduled clergy with clergy from throughout the state. Sometimes this preemption has taken place with very little notice to the local clergy, who often have made sacrifices in personal schedules in order to be available to deliver the scheduled prayer. During the 1983 Legislative Assembly one out-of-town clergyman who had been scheduled by the Bismarck Ministerial Association upon request of a legislator was preempted by another out-of-town clergyman who had not been scheduled in advance. A representative of the Bismarck Ministerial Association asked the committee if it would not be possible to provide advance notice of preemption by out-of-town clergy. The committee asked the Legislative Council staff to send letters to all legislators prior to the convening of the session giving the legislators until December 31, 1984, to schedule out-of-town clergymen to delivery daily prayers. The intent is that the schedules prepared based upon those requests received prior to December 31 are to be honored.

Legislative Employee Handbook

Upon conclusion of the 1983 Legislative Assembly, the supervisory staff of the House of Representatives prepared a legislative employee handbook which outlined the major duties of the various legislative employees, set out employee policies, and included forms for use by various legislative employees. Committee members expressed the view that an employee handbook is highly desirable, although the policies followed may change between the houses and from one session to the next. The committee directed the Legislative Council staff to provide the employment committees and supervisory staffs of both houses of the 1985 Legislative Assembly with looseleaf versions of the handbook prepared by the House staff in 1983. The intent is that the employment committees are to review and modify the employee handbooks to fit the respective houses and to reflect the policies established by the leadership and the employment committees.

Employee Screening and Training

The committee approved the hiring of personnel representing the two major political parties to screen legislative employee applicants prior to the 1985 Legislative Assembly. The committee also authorized the Legislative Council staff to conduct a one-day training session for committee clerks prior to the session.

Displays in Memorial Hall

North Dakota Century Code Section 54-35-02(8) provides the Legislative Council with authority to control the use of the legislative chambers and permanent displays in Memorial Hall. The preparation of guidelines on this subject was delegated to the committee. Under the guidelines adopted in 1981, the committee annually reviews permanent displays in Memorial Hall. In 1982 the committee approved relocating the Liberty Bell to the Heritage Center and in 1984 the committee approved relocating the two statues currently located in Memorial Hall to the Heritage Center.

Agency Bill Introductions

Agencies of the executive branch and the Supreme Court have been granted the privilege of introducing bills by both houses of the Legislative Assembly. This policy has permitted agencies to introduce prospective legislation of interest to the agencies without the necessity of contacting members of the Legislative Assembly. In addition, under the rules agency bills must be prefiled by December 15 preceding a legislative session in order to provide the Legislative Assembly with a full slate of committee hearings early in each session. Committee members expressed interest in encouraging agencies to prefile bills instead of waiting until the session has begun and having individual legislators introduce agency bills. The committee directed the Legislative Council staff to write to all agencies pointing out the problem of managing the legislative workload and asking for the agencies' full cooperation in managing that workload by prefiling their bills.

Journal Voting Records

Daily legislative journals are now prepared by the Legislative Council staff which permits the using of computer data bases which are also used for bills, calendars, the bill status system, and other computerized legislative documents. Interest was expressed in obtaining computerized voting records from the journal data base. To provide this information, programming would be necessary, which would cost time and money. The Legislative Council staff requested direction from the committee. In the past, the Legislative Council staff, as a nonpartisan legislative service agency, has avoided becoming the source of voting record information and has, as a matter of policy, provided persons interested with copies of relevant journal pages so that the journals, rather than members of the staff, have been the quotable sources of voting information. The committee went on record supporting the policy of the Legislative Council staff in not supplying voting record information but in making reference to the official records in the journal. Committee members expressed the view that spending public funds to run computer programs to provide voting record information for election purposes would be a misuse of public funds and more appropriately is a task which belongs with political parties.

Legislative Equipment

The committee approved the leasing of a second high speed printer for the Legislative Council staff for

preparation of bill drafts, journals, calendars, committee hearing reports, bill status reports, and other computerized legislative documents. During the 1983 Legislative Assembly the staff had one printer which had broken down and there had been some delay in the delivery of legislative documents. The committee also approved the purchase of the printer currently in use to take advantage of purchase accruals that have accumulated since the printer was installed in July 1982. The committee also approved the purchase of six voice activated pagers which will be used by legislative data processing personnel and the desk forces, particularly to provide communication during the preparation of daily journals.

NATURAL GAS PIPELINES COMMITTEE

The Natural Gas Pipelines Committee was assigned two study resolutions. House Concurrent Resolution No. 3044 directed a study of the desirability and feasibility of construction of a natural gas pipeline from western North Dakota natural gas fields to supply eastern North Dakota consumers. Senate Concurrent Resolution No. 4057 directed a study of the taxation of pipeline property used for transportation of petroleum products.

Committee members were Senators Chuck Goodman (Chairman), Mark Adams, Bruce Bakewell, Perry B. Grotberg, Clayton A. Lodoen, Dean Meyer, and Duane Mutch; and Representatives Ronald A. Anderson, Ralph C. Dotzenrod, Paul L. DuBord, Lyle L. Hanson, Steve Hughes, Richard Kloubec, Ray Meyer, and George A. Sinner.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. After amendment, the report was adopted for submission to the 49th Legislative Assembly.

TAXATION OF NATURAL GAS PIPELINE PROPERTY

Background

The committee's study of taxation of pipelines carrying petroleum products had its impetus in exemption of certain petroleum pipeline property from assessment by the State Board of Equalization in 1982. Since the state contains over 12,000 miles of such pipeline, the majority of which carries natural gas, the exemption caused concern for tax revenues from that pipeline property. The vast majority of pipeline property subject to central assessment by the State Board of Equalization is natural gas pipeline, so that committee study focused on taxation of natural gas pipelines, but pipelines carrying any petroleum products are subject to the same assessment.

On May 26, 1982, the Attorney General, in a letter to the Burleigh County State's Attorney, opined that the State Board of Equalization does not have authority to assess the Amoco Oil Company pipeline which runs from the Amoco Oil Company refinery in Mandan to the Minnesota border. The reasons expressed to support that decision were that the pipeline is used only by the owner for carrying its own products, it is not a common carrier within the purview of North Dakota Century Code (NDCC) Chapter 47-19, and, therefore, the use of the pipeline is not a public use within the requirements of NDCC Chapter 57-06, and Section 4 of Article X of the Constitution of North Dakota, for assessment by the State Board of Equalization. On the basis of that letter the 1981 taxes that had been paid under protest by Amoco Oil Company were refunded, and no 1982 assessment was made.

Subsequently, Phillips Natural Gas Company and Koch Industries, Inc., on behalf of Koch Oil Company, Matador Pipelines, Inc., and Okie Pipelines Company claimed exemption from assessment by the State Board of Equalization, on the basis that their gas pipelines carry only their own products and are not for public use.

Phillips Natural Gas Company filed suit in December 1982 seeking to invalidate the assessment by the State Board of Equalization of property taxes on its natural gas pipeline gathering system situated in Williams, McKenzie, and Divide Counties. The defendant State Board of Equalization filed an answer denying the allegation that the pipeline property should not be assessed by the State Board of Equalization and alleging as an affirmative defense that if the plaintiff's pipeline property is not subject to central ad valorem assessment pursuant to the provisions of Section 4 of Article X of the Constitution of North Dakota and NDCC Chapter 57-06, then the property is subject to local ad valorem assessment as an improvement to realty pusuant to the provisions of Section 4 of Article X and Chapter 57-02. The reason for interposing the affirmative defense that local assessment would apply if central assessment is not permissible is that if gas pipeline property is found to be personal property it is exempt from taxation if it is not centrally assessed under the constitutional provision.

Pipeline property has historically been assessed by the State Board of Equalization as personal property. This was done in part due to the convenience of central assessment of pipeline property passing through several different taxing districts. Pipeline property owned by a public utility and used to transport petroleum products is assessed by the State Board of Equalization. The board fixes a value per mile for the pipeline under NDCC Section 57-06-17 and makes a pro rata distribution of the assessment to the counties in which the pipeline is located. The county auditor then allocates the assessment to the taxing districts in which the pipeline is located. The administrative difficulty and practical problems of varying assessment levels from assessment in numerous taxing districts made it preferable to assess pipeline property centrally. Pipeline companies apparently acquiesced in this type of assessment until the Amoco Oil Company complained of the assessment of its pipeline, which the Attorney General determined should not be assessed by the State Board of Equalization.

Testimony

A representative of the State Board of Equalization testified that the board is concerned with inequities that exist in pipeline taxation. It appears that some pipelines which are being assessed by the board operate in substantially the same manner as others which are not being assessed. Some pipeline companies which claim to carry only their own products acknowledge that they have common carrier status, but argue that they are not for public use. The board estimated 1983 taxable valuation of gas pipelines was in excess of $38 million and a total possible tax loss to local government of $6.5 million per year if pipeline property is exempted. The board estimated that a total of $6,540,000 in taxes on petroleum pipelines would be payable in 1984. According to the board's estimates, that amount would increase to $6,870,000 if the Amoco Oil Company pipeline and other pipelines not assessed by the board were taxable. If natural gas gathering pipelines were exempted, the board estimated a reduction of approximately $900,000 in taxes due in 1984. The board reported that all pipeline tax revenue goes to political subdivisions except approximately

$40,000 which is collected by the state due to the one-mill medical center mill levy.

A representative of the State Board of Equalization said one of the legislative alternatives to deal with the pipeline taxation question is to do nothing and await court decisions which are pending. The board also reviewed potential legislative action but could not express an opinion on whether legislative action would cure the problem because court decisions have not determined whether pipelines are personal property which would be exempt from taxation if not subject to central assessment.

Representatives of Amoco Oil Company, Phillips Natural Gas Company, and Koch Industries, Inc., told the committee that pipelines have always been assessed as personal property and should continue to be assessed as personal property. The issue, as they see it, is whether the Legislative Assembly wants to tax personal property. Because other personal property is exempt from ad valorem taxes, they believe pipeline property should also be exempt as personal property if it is not a common carrier pipeline. They believe that certain pipelines never were used for any purpose but transportation of private property so those pipelines should not be subject to taxation as common carrier pipelines.

A representative of the North Dakota Petroleum Council testified that there is no need for any legislative action regarding taxation of natural gas pipelines. It was stated that only a portion of pipelines which are noncommon carrier pipelines would be exempted from assessment by the State Board of Equalization if the court decision in the pending case agrees with the Attorney General's letter in the Amoco Oil Company pipeline case.

Conclusion

The committee makes no recommendation to change current law regarding taxation of pipeline property. Cases presently pending in North Dakota courts regarding this issue will not be resolved until after adjournment of the 1985 Legislative Assembly. The pending cases will determine whether all, some, or none of the pipelines in the state are assessable by the State Board of Equalization. The committee received no recommendations for statutory changes regarding taxation of pipelines. Changes in the law prior to court decisions on the taxation of natural gas pipelines may be premature and may not achieve desired results if court decisions change the existing tax structure. Court decisions will clarify the situation after the decisions are rendered. The committee found that no refund would be required from state funds if the plaintiffs in the pending cases are successful since taxes paid under protest are held in escrow and would be returned to the taxpayer if the taxpayer is successful in its lawsuit.

The committee recommends further review of the taxation of natural gas pipelines by the Legislative Council, State Board of Equalization, and State Tax Commissioner subsequent to pending court decisions on taxation of natural gas pipelines.

CONSTRUCTION OF A NATURAL GAS PIPELINE

Background

The study of the feasibility of constructing a pipeline from western North Dakota to eastern North Dakota was intended to determine whether it could solve two problems that existed in the state. A great surplus of underground natural gas in the western part of the state has resulted in wasteful flaring of natural gas and capping of some wells which could produce oil, except for the presence of natural gas which cannot be marketed. This has contributed to the overall decline of the oil development industry in western North Dakota. Eastern North Dakota natural gas consumers supplied by Northern States Power Company (NSP) were paying a considerably higher price for natural gas service than consumers in western North Dakota because NSP's supply of Canadian natural gas was priced from 10 to 25 percent higher than domestic gas in recent years.

The existence of these two problems suggested the possibility of providing a market for surplus western North Dakota gas in eastern North Dakota. Consumer gas prices were considerably higher in NSP's service area than the prices charged to consumers of Montana-Dakota Utilities Company (MDU), which serves western North Dakota with domestic gas. To accommodate the transportation of gas, a new pipeline would be necessary because MDU's distribution system extends only as far east as Valley City and does not interconnect with NSP's pipeline system. Also, the MDU gasline gets progressively smaller as it goes east, and does not have the capacity to carry the gas supply needed in eastern North Dakota cities.

The gas marketing problem in western North Dakota was largely a result of the loss by MDU of a portion of its market for gas from a loss of gas sales to Colorado Interstate Gas Company. Montana-Dakota Utilities had contracted to supply Colorado Interstate Gas with large quantities of gas from western North Dakota, and MDU had entered gas purchase agreements to meet its obligation under the contract. Colorado Interstate Gas backed out of the contract and the Federal Energy Regulatory Commission (FERC) approved cancellation of the contract over MDU's objections. In early 1983 MDU was buying only 50 percent of its former gas purchases in western North Dakota and was unable to market additional gas. This lower gas consumption resulted in lower oil production and issuance of fewer drilling permits. The reduction in exploration adversely affected the economy of western North Dakota. If a market could be found for the gas, it could be processed and sold and would increase drilling activity and oil production which would increase state tax revenues.

Northern States Power, which serves eastern North Dakota natural gas consumers, operated under a service agreement for Canadian gas, which would have been effective through 1985, with Midwestern Gas Transmission Company. Contracts in place in 1983 tied NSP to Canadian supply through Midwestern until 1989 and could have been extended into the 1990's if approved by United States and Canadian regulatory authorities. In May 1983 prices of Canadian gas dropped from $4.94 to $4.40 per thousand cubic feet across the United States as a reflection of Canadian marketing problems and competitive pricing. However, despite the reduction, prices to consumers in eastern North Dakota remained well above the level paid by consumers of domestic natural gas in western North Dakota.

Testimony

The committee sought estimates on pipeline construction costs from two sources. Montana-Dakota Utilities presented cost estimates on four alternate

pipeline routes from western to eastern North Dakota, with cost estimates ranging from $36.9 million to $46.3 million. Montana-Dakota Utilities estimated that those costs would be increased by use of state highway right of way because of the small area with which to work. Northern Engineering International Company of Omaha, Nebraska, presented cost estimates for five alternate pipeline routes to transport gas from western North Dakota to eastern North Dakota, with cost estimates ranging from $31.2 million to $60.9 million.

Representatives of MDU and NSP testified that they view the construction of a pipeline to transport gas from western North Dakota to eastern North Dakota as economically infeasible. Both companies indicated that the cost of construction could not be offset without greatly increasing the cost of gas to consumers in eastern North Dakota. Montana-Dakota Utilities representatives testified that the cost to consumers served by gas through the proposed pipeline would be approximately 10 percent higher than the rates in effect prior to the recent price reductions in Fargo and Grand Forks.

The committee requested and received an estimate from the Oil and Gas Division of the Industrial Commission on potential benefit to the state from opening additional markets to sales of western North Dakota natural gas. The estimate indicated that additional revenue of $14.2 million is available to the state for a two-year period from oil and gas production taxes, oil extraction taxes, use taxes on drilling and construction of an additional gas processing plant, and sales taxes for drilling materials. Additional tax benefits would accrue to the state from income from jobs created, additional revenues from royalties and leases, value taxes on pipeline and additional plant facilities, and fuel taxes on construction and drilling, but the benefits to the state of these other considerations was not included in the calculations.

During the course of the committee's study, NSP entered into a new gas purchase and transportation agreement which allowed for reduced prices to its natural gas consumers in eastern North Dakota. The Attorney General filed an action with FERC to invalidate tariff provisions in effect on Canadian gas purchased by NSP. While that action was pending, Midwestern Gas Transmission Company, which transported the gas to NSP, chose not to risk an unfavorable decision on existing tariff provisions and struck an agreement with NSP and Northern Natural Gas Company. Under that agreement, which was approved by FERC, NSP is supplied with domestic natural gas by Northern Natural Gas and the gas is transported by Midwestern. The contract agreement extends to 1993 and provides that Northern Natural Gas is free to search for markets where they are available. Western North Dakota gas is not a source of Northern Natural Gas and, although the agreement reduced prices to gas consumers in eastern North Dakota, it did nothing to ease the surplus of natural gas in western North Dakota.

Industry representatives told the committee that the key to selling excess natural gas from the Williston Basin is opening additional markets. The committee sought testimony from representatives of the Northern Border Pipeline Company (Northern Border). Northern Border's pipeline crosses part of North Dakota and is presently operating at less than half of its capacity and could accept large volumes of natural gas for transportation. Northern Border does not market natural gas but is merely in the business of transporting gas.

Northern Border representatives presented detailed information to the committee on two Northern Border proposals which were pending approval of FERC. Both proposals have potential to open markets for large quantities of western North Dakota natural gas. Under one proposal Northern Border would transport gas from MDU's system in North Dakota to the Northern Natural Gas system, which would deliver it to the Terra Chemicals International plant in Port Neal, Iowa. Under the other proposal Northern Border's pipeline system would be extended into Pennsylvania from its present termination point in Iowa. Approval of the second proposal would open additional markets throughout the eastern United States to North Dakota natural gas through the Northern Border system.

A representative of MDU testified that one method to increase the market for natural gas in North Dakota is to remove the state sales tax on natural gas. North Dakota imposes no sales tax on sales of electricity, and it was suggested that removal of the sales tax from natural gas would make natural gas better able to compete with electricity in the market in the state.

Recommendations

The committee supports both applications of Northern Border pending with FERC. Letters of support were sent on the committee's behalf to FERC and the North Dakota Public Service Commission. The Public Service Commission intervened as a party in support of both applications of Northern Border, and, when it was determined that the committee lacked authority to intervene as a party, the committee's support for the Northern Border applications was expressed through letters to the Public Service Commission. Copies of the letters were forwarded to FERC and became part of the public record on the applications, thereby insuring FERC consideration of the committee's views. The proposal to transport gas from MDU to Terra Chemicals International was approved by FERC. The proposal to extend Northern Border's system into Pennsylvania is pending and action is expected in early 1985. The price of natural gas to NSP consumers in eastern North Dakota was reduced by NSP's new purchase agreement and the cost of pipeline construction proved prohibitive so the committee makes no recommendation regarding construction of a pipeline. Montana-Dakota Utilities is presently unable to market any excess natural gas through its system and the most feasible existing alternative is transportation of natural gas through the Northern Border Pipeline system to markets outside the state. It is to the advantage of the state to open additional markets for sales of North Dakota gas in hopes that that gas can be marketed to reduce the gas surplus in western North Dakota and allow expanded development of the oil industry there.

[This recommendation was deleted by the Legislative Council at its November meeting, but is printed here pursuant to Rule 5 of the Supplementary Rules of Operation and Procedure of the Legislative Council:

The committee recommends a bill to remove the sales tax from sales of natural gas within the state. Removal of the sales tax would reduce costs to natural gas consumers and would also benefit the state by increasing use of natural gas in the state and thereby reducing the surplus of natural gas in western North Dakota which would allow expanded exploration for and production of oil and gas. The committee reviewed a fiscal note on an identical 1983 bill, which estimated a revenue loss to the general fund of from $5.7 to $6.6 million for the 1983-85 biennium. That fiscal note was based on the three percent sales tax then in effect and natural gas prices and volumes sold have changed since preparation of that fiscal note. The committee requested a current fiscal note on the impact of this bill but the fiscal note requested has not been received at the time of preparation of this report.]

NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned two studies. 1983 House Concurrent Resolution No. 3046 directed a study of the generation of low-level radioactive waste in this state to determine the quantity produced and danger imposed by its existence, predict future changes in the amount of low-level radioactive wastes that will be produced in this state, analyze the latest methods devised for proper handling and ultimate disposal of low-level radioactive waste, study the cost of designating and operating an in-state site for disposal of low-level radioactive waste produced in this state, and study the risks and benefits associated with joining an interstate low-level radioactive waste compact. The resolution also directed a study of the handling, storage, use, transport, and processing of toxic or hazardous substances which may endanger the health, welfare, and safety of persons who live and work in this state. 1983 House Concurrent Resolution No. 3091 directed a study of the impacts of waterfowl refuges and waterfowl production areas in the state for the purpose of recommending corrective state and federal legislation.

Committee members were Senators Don Moore (Chairman), Ray David, Dean Meyer, and Art Todd; and Representatives James Gerl, Lyle L. Hanson, Charles F. Mertens, Eugene Nicholas, Kenneth Olafson, Glenn A. Pomeroy, Larry W. Schoenwald, and Scott B. Stofferahn.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

LOW-LEVEL RADIOACTIVE WASTE

Background

Low-level radioactive waste is ordinary industrial or research waste contaminated with small amounts of radioactive material. It is normally generated in the course of nuclear reactor operations, research, medical diagnosis and treatment, and industrial activities. As yet, there is no standard or commonly accepted definition of low-level radioactive waste. Examples are nuclear fuel reprocessing wastes, uranium mine and mill tailings, animal carcasses used for research, filter sludges, liquid residues, and paper products. The majority of low-level radioactive waste has a half-life of 30 years, and it is generally recommended that a disposal facility be monitored for at least 300 years after its closure.

Most low-level radioactive waste generated by non-Department of Energy activities has been disposed of by shallow land burial in trenches at six commercially operated sites — Sheffield, Illinois; Maxey Flats, Kentucky; Beatty, Nevada; West Valley, New York; Barnwell, South Carolina; and Hanford, Washington. The sites in Illinois, Kentucky, and New York have been shut down indefinitely.

In 1980 the total volume of low-level radioactive waste produced in this country as reported by the operators of the three remaining national disposal facilities was 106,766 cubic meters. North Dakota shipped to the Barnwell, South Carolina, and the Hanford, Washington, disposal facilities in that year four cubic meters of low-level radioactive waste.

Low-Level Radioactive Waste Policy Act of 1980

The federal Low-Level Radioactive Waste Policy Act of 1980 declares as federal policy that each state is responsible for the availability of capacity either within or outside the state for the disposal of commercial low-level radioactive waste generated within its borders, and that low-level radioactive waste can be most safely and efficiently managed on a regional basis. The Act authorizes states to enter into compacts to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste. It provides that after January 1, 1986, any such compact may restrict the use of the regional disposal facilities to the disposal of low-level radioactive waste generated within the region.

There are six regional groups for the formulation of a regional interstate compact for disposal of low-level waste. These are the Northeast, Southeast, Midwest, Central States, Rocky Mountain, and Northwest interstate compact groups. North Dakota was initially eligible to join either the Midwest Interstate Compact or the Central States Interstate Compact. This eligibility, however, expired for both compacts during the interim.

The Low-Level Radioactive Waste Policy Act establishes a mechanism for the establishment of regional interstate compacts for the disposal of low-level radioactive waste. It does not, however, mandate each state to join a compact. Therefore, states are free to seek independent solutions outside the scope of the Act.

The Low-Level Radioactive Waste Policy Act provides a "carrot and stick" approach to encourage states to join a compact group. The "carrot" is the granting to a compact the power to limit the importation and exportation of low-level waste into and from the region after January 1, 1986. The "stick" is the inability of a state not part of an interstate compact to prohibit the importation of low-level radioactive waste.

State Law

North Dakota Century Code (NDCC) Chapter 23-20.2 currently governs the disposition of nuclear waste material in this state. Section 23-20.2-01 declares as policy of this state that it is in the public interest to encourage and promote the proper implacement of material into subsurface strata for the purpose of storage and retrieval of material and to promote the terminal disposal of municipal, industrial, and domestic waste in such manner as to prevent the contamination or pollution of surface and ground water sources or any other segment of the environment and to avoid creation of secondary hazards of a geologic nature.

Section 23-20.2-02(5) defines "waste" to include all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into the state for disposal. The chapter places jurisdiction of the disposal of radioactive materials with the Industrial Commission. The commission has authority to regulate broadly the establishment of a disposal facility for radioactive waste in this state. It should be noted that there are no existing disposal sites in North Dakota for high- or low-level radioactive wastes. Section 23-20.2-09 requires legislative approval prior to the disposal within the state of any radioactive waste material.

1983 Legislative Assembly Action

The Midwest Interstate Low-Level Radioactive Waste Compact failed to pass the 1983 Legislative Assembly. The bill (House Bill No. 1240) was introduced at the request of the Department of Health. The House Social Services and Veterans Affairs Committee minutes indicate that it received a "do not pass" recommendation because of concerns that this state would become a host state for a low-level radioactive waste disposal facility despite the fact that it is a very small producer of low-level waste.

Committee Considerations

The committee conducted its study of low-level radioactive waste with testimony and recommendations from the Department of Health; the radiation safety officers of the University of North Dakota and North Dakota State University; the North Dakota Medical Association; Chem-Nuclear, Inc., South Carolina; the League of Women Voters of North Dakota; and other interested persons.

The committee received testimony concerning existing and alternative methods for low-level radioactive disposal, including shallow land burial, incineration, and aboveground storage; the progress and activities of other states and interstate compacts on this matter; and the disposal costs and needs of North Dakota low-level radioactive waste producers, primarily the University of North Dakota and North Dakota State University.

The committee focused on the following basic issues in its examination of the options open to North Dakota in this area:

1. What protection or guarantees exist against being forced to host a radioactive waste disposal facility?
2. What are the initial entry costs of the option being considered?
3. If the option includes the development of a disposal facility, is there sufficient volume of low-level waste to make the facility economically viable?

The committee considered various options for this state for the disposal of low-level radioactive waste:

1. **Go it alone.** The committee examined the feasibility and desirability of not joining an interstate compact. Information received by the committee indicated that while there are no serious questions with regard to whether a compact with congressional approval may restrict the importation of low-level waste into the region, it is not clear if an individual state may do so. In Philadelphia v. New Jersey, 437 U.S. 617, 98 S.Ct. 2531 (1978), the United States Supreme Court held invalid, as a violation of the Commerce Clause, a state statute prohibiting the disposal of ordinary waste imported into the state. It is therefore questionable whether any state would be able to refuse disposal of imported low-level waste within its borders without joining an interstate compact. For a state restriction on the importation of low-level waste to survive a Commerce Clause challenge the argument would have to be made that Philadelphia v. New Jersey does not apply to the importation of low-level radioactive waste. The argument would have to assert that because of the difference between low-level radioactive waste and ordinary waste the interest of the state in the health and safety of its citizens outweighs the burden imposed on the national marketplace.

   Approval by Congress of a compact on low-level radioactive waste acts to immunize any compact activity from Commerce Clause restrictions. If the Commerce Clause does prohibit state restrictions on the importation of low-level radioactive waste, a state "going it alone" would be unable to limit the use of an in-state disposal facility to in-state generators. Testimony received by the committee suggested that a state "going it alone" may be able to limit the type and quantity of low-level radioactive waste imported into the state. For example, it could prohibit the disposal of liquid low-level waste and possibly limit the amount that could be shipped into the facility during any specified time period.

   There are three possibilities for action under this option. The first possibility is for the state not to develop a disposal facility. In this instance the state would have to either contract with another state or compact for the disposal of waste generated within the state or take steps to eliminate the production of low-level waste within the state. The second possibility is to develop a small disposal facility for the purpose of disposing of waste generated within the state. As discussed previously, while it is possible the state may not be able to prohibit the importation of waste for the disposal at this small facility it may be able to limit the type and quantity allowed to be disposed of at the site because of the specific limitations inherent in operating a small facility. The third possibility is to develop a large capacity disposal facility and contract with other states and compacts to dispose of their low-level radioactive waste.

   The Department of Health provided cost estimates for a low-level radioactive shallow land burial disposal facility for only this state's waste. According to these estimates, it would cost the state approximately $42,660 to construct such a disposal facility and would cost, at minimum, approximately $4,000 per cubic meter of low-level radioactive waste. Recent costs to the state for disposal of low-level radioactive waste at the national disposal facilities at Barnwell, South Carolina, and Hanford, Washington, were approximately $1,400 per cubic meter.

   The committee eliminated from consideration the option to "go it alone" because of the relatively high costs of developing an in-state facility, the uncertainty of whether the state could contract out for disposal of this state's low-level radioactive waste by another disposal facility if no in-state facility were developed, and the uncertainty of whether the state would be able to prohibit the importation of low-level radioactive waste without being a member of an interstate compact.

2. **Join an existing compact.** The committee studied the desirability and feasibility of joining the Midwest, Central States, the Rocky Mountain, and the Northwest low-level radioactive waste interstate compacts. North Dakota was orginally eligible to join the Midwest or the Central States interstate compacts. However,

that eligibility ended on January 1, 1984, for the Central States Compact and on July 1, 1984, for the Midwest Compact. Notwithstanding original eligibility requirements, the Midwest, Central States, and the Rocky Mountain Compacts provide for eligibility by petition.

The committee requested Governor Olson to petition the Midwest and the Rocky Mountain Compacts for eligibility. Governor Olson agreed to do so and both petitions were accepted by the respective compacts. According to the Midwest acceptance of the petition for eligibility the state must adopt the compact by July 1, 1985. The Rocky Mountain Compact eligibility has no termination date.

a. **Midwest Compact:** This compact has seven party states — Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The compact does not have an existing disposal facility and the waste produced by the member states is approximately seven percent of the nation's total. The compact provides that the interstate compact commission shall designate a host state for a disposal facility if no member state volunteers. A designated host state may withdraw from the compact within 90 days after being designated. Withdrawal after the 90-day period results in state liability for the costs and expenses of the compact incurred because of the withdrawal and a forfeiture of all contributions or fees paid. The initial entry fee is $4,000 for North Dakota.

   The Midwest Compact was considered by the committee as a possible option because the compact had been introduced during the 1983 Legislative Assembly, because it only requires a $4,000 initial entry fee from this state, and because testimony showed that the Midwest Compact party states generated sufficient low-level radioactive waste volume to have an economically viable disposal facility. Committee discussion concerning the Midwest Compact showed strong reservations over the lack of any guarantees that the Midwest Compact Commission would not designate North Dakota as a host state.

b. **Rocky Mountain Compact:** This compact has four member states — Colorado, Nevada, New Mexico, and Wyoming. The compact has an existing disposal facility operational at Beatty, Nevada. The site will be open through 1989 and Colorado is working toward having a new facility available by 1990. The member states produce less than one percent of the nation's total low-level radioactive waste. The committee received information indicating a disposal facility for this compact would be less economically viable because of the relatively low volume of low-level radioactive waste produced in the region. The compact specifically provides that if a member state produces less than 20 percent of the low-level radioactive waste volume in the compact group that state does not have an obligation to serve as host state. The initial entry fee is $70,000 for each party state.

   The Rocky Mountain Compact was viewed favorably by the committee as an option because it provides protection and guarantees that this state will not be forced to be a host state for a low-level radioactive waste disposal facility.

c. **Central States Compact:** This compact has five member states — Arkansas, Kansas, Louisiana, Nebraska, and Oklahoma. The compact does not have an existing low-level radioactive waste disposal site. The member states of this compact produce approximately three to four percent of the nation's total low-level radioactive waste. The compact provides that the compact commission may authorize the development of a disposal facility if no member state volunteers to be a host state. The initial entry fee is $25,000 for each party state.

   The committee eliminated the Central States Compact as an option because of information indicating that the compact may not be economically viable and because it provides no protection or guarantee that this state would not be designated a host state.

d. **Northwest Compact:** This compact has seven party states — Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington. The compact has a disposal facility at Hanford, Washington.

   The committee eliminated the Northwest Compact as an option because of information received indicating that the compact is unwilling to accept additional party states.

3. **North Dakota — South Dakota Compact:** The committee, responding to overtures from the South Dakota Legislative Research Council's interim Agriculture and Natural Resources Committee, which was also studying low-level radioactive waste disposal, met with representatives of that committee and others from South Dakota to discuss the possibility of enacting an interstate compact for the disposal of low-level waste. If such a compact were adopted three scenarios are possible. First, no disposal facility would be developed in either state. Under this scenario both states must either cease production of low-level waste or negotiate with another compact or disposal facility for disposal of waste generated within the region. Second, a small site could be developed for the disposal of only North Dakota and South Dakota waste. Importation of waste could be prohibited under the terms of the compact. Under this second scenario there would probably be higher costs for disposal of the relatively small amount of low-level waste generated by the two states. Third, a large commercial site could be developed to accept for disposal waste generated in other states and compacts. A draft legislative proposal to enter into a Dakota low-level radioactive waste compact was submitted to the committee from the South Dakota interim Agricluture and Natural Resources Committee. At the request of the committee the Legislative Council approved the creation of a subcommittee to work with the South Dakota interim committee on the draft legislation for a two-state compact. The subcommittee met once, reviewed the draft

legislation, and recommended substantive and technical changes to the South Dakota committee.

The South Dakota interim committee did not recommend any legislation on the subject of low-level radioactive waste during the 1984 South Dakota Legislature. Testimony received by the committee indicated that, because of the possibility of having a low-level radioactive waste disposal facility near Edgemont, South Dakota, the disposal of low-level radioactive waste is a major issue in that state. The South Dakota interim committee did not introduce the two-state compact concept because of a belief that there was no real consensus in South Dakota on the issue of low-level radioactive waste and that, if the two-state compact was introduced and defeated, future examination of that option would be damaged.

The 1984 South Dakota Legislature considered bills to join the Rocky Mountain and Midwest Compacts and a different version of a Dakota Compact. None of these was enacted and no 1984 interim study on the issue was proposed. Testimony also indicated that an initiated measure is on the 1984 general election ballot in South Dakota. The measure would require voter approval of any low-level radioactive waste interstate compact or in-state disposal facility.

Proponents of the Dakota Compact concept argued that it provides the necessary protection against this state being forced to host a disposal facility. Opposing testimony centered on the uncertainty of how long South Dakota would be willing to be a host state and the potential high cost of developing and operating a small disposal facility if a commercial facility is not developed. The committee also expressed concern over the possibility that, if a two-state compact is enacted between North Dakota and South Dakota, the initiated measure in South Dakota, if passed, would require voter approval of any interstate compact. If the voters disapproved the compact, the North Dakota Legislative Assembly would be unable to enact a different compact until its next session — after the federal deadline of January 1, 1986.

Testimony received by the committee indicated that the Congress of the United States may not look favorably on the formation of many small interstate compacts on low-level radioactive waste because the general policy of the Low-Level Radioactive Waste Policy Act is that low-level radioactive waste should be managed on a regional basis.

4. **Western Compact:** The committee received information that California and Arizona are considering a two-state interstate compact. California is the largest volume producer of low-level radioactive waste in the western United States. The disposal site, therefore, being considered for development in California would probably have sufficient volume to be economically viable. As of the committee's last meeting, substantially similar forms of the Western Compact had not yet been passed by both California and Arizona. The committee eliminated the Western Compact as an option because of the uncertainty and early stages of its formation.

Recommendations

The committee recommends alternative bills entering into low-level radioactive waste compacts. The committee recommends House Bill No. 1077 to enter into a Dakota Interstate Low-Level Radioactive Waste Compact with the following major provisions:

1. North Dakota and South Dakota are the named eligible states.
2. Petition for eligibility by other states is allowed upon commission approval.
3. Withdrawal is allowed by repeal of the enabling legislation effective after five years.
4. An interstate compact commission administers the provisions of the compact. Each party state has two commission members, except for the host state which has one additional member.
5. Each party state pays up to $50,000 annually for administrative expenses of the commission until surcharges on low-level radioactive waste disposed of at a facility located in the region are sufficient. Party states are reimbursed for administrative cost contributions if these surcharges are sufficient.
6. A host state must volunteer. There is no commission power to designate a host state.
7. The commission approves a party state proposal to be a host state.
8. The host state has responsibility for the low-level radioactive waste disposal site and facility.
9. The host state is responsible for operation, closure, postclosure observation, and maintenance of the disposal facility.
10. The commission approves all fees, charges, or surcharges imposed under the compact.
11. The commission may negotiate for the right to use facilities outside the region. The commission may allow nonparty states or other compacts to use in-region disposal facilities. Nonparty states and other compacts allowed to use the facilities must agree to allow party states to use their diposal facilities if the in-region facility should terminate operations.
12. The host state must establish a postclosure fund.
13. The party states may impose a state surcharge for regulatory costs.
14. The host state and political subdivisions in the host state may impose surcharges.
15. The commission may insure itself for personal injury liability.
16. Facility site duration is for 20 years or the design life of the facility, whichever is longer.
17. The host state must provide five years' notice before closure of a site, unless there is an emergency situation.
18. No exportation from the region is allowed unless the host state authorizes it.

The committee recommends the Dakota Compact primarily because it provides protection against this state being forced to host a low-level radioactive waste disposal facility; it allows the state a greater voice on the interstate compact commission than it would have in a compact with more party states; and it allows North Dakota to be a "good neighbor" to South Dakota by allowing that state more control over the

development of the proposed commercial low-level radioactive waste disposal facility near Edgemont, South Dakota, than would exist if South Dakota belonged to a compact with more party states.

The committee also recommends, as an alternative, House Bill No. 1078 to enter into the Rocky Mountain Interstate Low-Level Radioactive Waste Compact with the following major provisions:

1. Colorado, Nevada, New Mexico, and Wyoming are the existing party states.
2. Petition for eligibility by other states is allowed upon commission approval.
3. Withdrawal is allowed by repeal of the enabling legislation effective after two years.
4. An interstate compact commission administers the provisions of the compact. Each party state has one commission member.
5. Each party state must pay an initial entry fee of $70,000 for administrative expenses of the commission.
6. A party state which generates less than 20 percent of the volume of low-level radioactive waste in the region does not have an obligation to serve as host state.
7. Colorado has been selected to be the first host state after the Beatty, Nevada, site is closed in 1989.
8. The host state is responsible for development of the disposal facility.
9. The host state is responsible for operation, closure, decommissioning, and long-term care of the disposal facility.
10. The commission must impose a compact surcharge per unit of low-level radioactive waste received at a regional facility adequate to pay the administrative costs of the commission.
11. The host state may impose a state surcharge subject to the approval of the commission for any purpose it deems necessary, including payment of regulatory costs, decommissioning, and long-term care funds, and local impact assistance.
12. The commission must authorize low-level waste disposal outside the region.

The Rocky Mountain Compact alternative was considered necessary by the committee because of the fact that South Dakota may not enact the Dakota Compact and even if it does the initiated measure on the 1984 general election ballot in South Dakota, if approved, would require voter approval of a low-level radioactive waste compact and whether the state would develop a low-level radioactive waste disposal facility.

The committee specifically recommends that the Midwest Interstate Low-Level Radioactive Waste Compact not be adopted because it does not afford the protections and guarantees necessary to assure that this state would not be forced to become a host state for a required low-level radioactive waste facility.

TOXIC AND HAZARDOUS SUBSTANCES

The committee received information showing that nationally there exists a multitude of problems and issues in the subject area of toxic and hazardous substances. These include hazardous waste disposal siting, hazardous waste transportation, hazardous waste management, hazardous materials transportation, high-level radioactive waste disposal, low-level radioactive waste disposal, toxic substances in the workplace, United States veterans' exposure to toxic substances (agent orange), ground water and surface water pollution, acid rain, chemical spill accidents, criminal and civil liability for injuries caused by toxic or hazardous materials, and issues concerning specific toxic substances such as asbestos, dioxins, and polychlorinated biphenals (PCB's).

The committee focused its study in two areas — worker right-to-know legislation and the state hazardous waste management program.

Worker Right-to-Know — Background

Right-to-know legislation is concerned with workers' and public access to information about toxic materials in the workplace and in the community. In 1980 more than one-half million potentially hazardous chemical products were in use in the manfacturing sector. An estimated 14 million full-time production employees were exposed to these substances, sustaining 360 million annual exposures. One estimate has been made that 260,000 lost work days per year occur as a result of injuries associated with uncontrolled exposures to chemicals in the workplace.

It is possible many injuries could be avoided if workers knew the chemical names and hazards of the substances with which they are working. Although the effects of many toxic substances are well reported in scientific literature, this information is not always communicated to workers. While hazards and toxic effects are reported under the scientific name of the substance (often the chemical name), products in the workplace are identified by thousands of trade and code names, leaving workers ignorant of the potential dangers they face.

The rationale behind right-to-know legislation is, therefore, concern for the health and safety of workers and communities. Many industrialized parts of the United States show higher rates of cancer and certain other health problems than the rest of the nation. Many of these diseases are known to be or are suspected of being work related. Many worksites may release hazardous substances into the community at large or expose workers' families to them. Firefighters and other emergency response personnel are beginning to demand more comprehensive information about the hazardous materials they encounter.

The underlying debate in the area of right-to-know legislation, essentially, is over costs — both to the industries involved and to the states for enforcement. Industry is concerned that state regulations should provide flexibility in compliance requirements and that some degree of consistency among the various states be maintained. Industry also fears that strict and inconsistent state laws will lead only to confusion, hardship, and unnecessary costs — without equivalent gains in workers' safety.

As a result of these industrial concerns the Chemical Manufacturers Association (CMA) and other industry associations have supported federal legislation in this area. Organized labor has also urged federal action in this area and has sought federal standards that guarantee workers the "right to know" what they are working with and the effects of the exposure to those substances.

Most right-to-know proposals center on providing workers a Material Safety Data Sheet (MSDS), which is considered the primary means of providing chemical safety information. There is apparently little disagreement among industry and labor on what should be

included in an MSDS. It is generally accepted that chemical manufacturers are the best source of MSDS information, and legislation usually requires manufacturers to provide data when requested by an employer regulated under a right-to-know statute.

A greater controversy exists in the debate over which chemicals should require an MSDS and how the MSDS should be made available for the workers. These methods have been utilized by the states in solving this issue:

1. Requiring that employers provide MSDS information on any substance listed in the National Institute for Occupational Safety and Health (NIOSH) Registry of the Effects of Toxic Substances (RETS), or a chemical that has shown "positive evidence of acute or chronic health hazards in human, animal or other biological testing." The registry lists more than 50,000 substances. Industry has made claims that such a broad definition will require them to provide detailed information on such common substances as table salt and beach sand.
2. Requiring that the OSHA "z" list be used. This list contains over 400 substances and is preferred by industry because it makes compliance easier.
3. Leaving the matter of identifying hazardous substances to administrative rule.
4. Letting employers decide what substances in their workplaces are hazardous. This approach is being taken in OSHA's hazard communications regulations.

Each piece of right-to-know legislation must have some sort of provision as to what information employers must provide to their workers on the potential hazards of the substances they are working with. Industry has argued that different types of workplaces and situations require different approaches to successful communications about hazards. The opposing view is that the labeling of all chemicals in the workplace is a must. Some state approaches have included education and training programs as a required means of employee notification of existing hazards. Under some right-to-know laws, workers also may have the right to refuse to work should they believe their employer has not followed the regulations.

A major concern of employers is that right-to-know laws could jeopardize company trade secrets. Most legislation, however, does include certain trade secret protection provisions.

Because of the potentially high cost of compliance, recordkeeping has become a major point of contention in the debate. The issue is over who should keep the records and for how long. Records on worker exposure are useful since so many diseases related to hazardous substances demonstrate a period of latency, which is up to 40 years for some substances.

Opponents of state right-to-know laws claim that because industry is already required by federal law to keep records, the imposition of additional, possibly conflicting regulations would only increase costs and provide few additional benefits. Proponents of a stronger state emphasis on records argue that the information is insufficient when considering the potential health consequences of exposure.

OSHA Hazard Communications Rule

On November 25, 1983, the federal Occupational Safety and Health Administration (OSHA) adopted a final rule on hazard communications to employees working with toxic or hazardous substances (29 CFR Part 1910). The final standard purports to preempt state action in this area. The final standard states:

> This occupational safety and health standard is intended to address comprehensively the issue of evaluating and communicating chemical hazards to employees in the manufacturing sector, and to preempt any state law pertaining to this subject. Any state which desires to assume responsibility in this area may only do so under the provisions of §18 of the Occupational Safety and Health Act (29 U.S.C. 651 et seq.) which deals with state jurisdiction and state plans.

North Dakota does not have a state level OSHA program. A bill to allow the implementation of a state OSHA program was defeated in 1973. The 1974-75 interim Industry and Business "A" Committee studied the desirability of enacting a state Occupational Safety and Health Act. That committee recommended that a state OSHA program not be implemented.

The OSHA hazard communication standard requires chemical manufacturers and importers to assess the hazards of the chemicals they make or import and to distribute this information for use in informing workers of the hazards associated with the chemicals in their work area. The standard applies only to the manufacturing industry. According to OSHA, the new standard will reduce the incidence of chemically related occupational illness and will protect some 14 million workers. The rule will require about 10,000 chemical manufacturing firms to develop hazard assessment data and to pass it on to purchasers. The standard's training provisions, estimated by OSHA to cost about $400 per employee, will enable workers to better protect themselves, according to OSHA.

In addition to hazard assessment and worker training, the OSHA standard requires chemical labeling, access to safety data, and recordkeeping.

The OSHA standard specifically provides:

1. Employers must develop a written hazard communication program for their workplaces. This plan must include a list of the hazardous substances used in the workplace and a plan for informing workers and contractors of these hazards. This plan must include provisions for labeling hazardous substances, for hazardous material safety data sheets, and for employee information and training.
2. Manufacturers, importers, and distributors of chemicals covered under the standard must label each chemical when it leaves their control. The labels must include the identity of the chemical, hazard warnings, and the name and address of the manufacturer or importer.
3. Chemical manufacturers and importers must provide a material safety data sheet with each chemical they sell.
4. Employers must train workers on hazardous materials handling and tell workers where the material safety data sheets can be found.
5. Chemical manufacturers are provided trade secret protection for qualifying substances but trade secret information must be released in a medical emergency or upon written request from a health professional who explains why the information is needed and who agrees not to release the information.

As stated by OSHA, the benefits of the hazardous

communication program will filter down through the required labels and material safety data sheets to those employee classes not in the manufacturing sector.

The AFL-CIO, the United Steelworkers, and other labor groups have alleged that OSHA promulgated the standard to preempt state laws, rather than to protect workers. Various labor and state groups have challenged the preemption claim of the OSHA rule claiming the rule will lessen rather than strengthen protection in states with right-to-know laws and that coverage of only manufacturing sector employees leaves millions of workers unprotected from chemical hazards. That lawsuit is pending and is expected to take several years to complete. In the meantime, the standard's provisions for manufacturers take effect November 25, 1985, with the employee training and notification provisions becoming effective May 25, 1986.

Worker Right to Know — Committee Considerations

The committee considered a bill draft that would have established a state level worker right-to-know program. The program draft would have been administered by the Workmen's Compensation Bureau and would have applied to all employers and their employees, except the spouses and children of employers, domestic workers and casual laborers employed at the residences of the employers. The bill draft contained provisions relating to labeling, material safety data sheets, posting requirements, employee training and education programs, community accessibility to toxic material information, workplace inspections, recordkeeping, employee rights, and trade secret protection.

The bill draft also provided for an interagency council between the Workmen's Compensation Bureau, the State Fire Marshal, and the Department of Health, and representatives of the State Disaster Emergency Services office, the Commissioner of Labor, the State Laboratories Department, and representatives of business, industry, and labor. The bill draft provided for a complaint procedure and a civil action remedy with a civil penalty not to exceed $500.

Testimony in favor of the bill draft was received from the North Dakota AFL-CIO, the North Dakota Building and Construction Trades Council, and interested individuals. These proponents argued that the existing OSHA standard would not sufficiently protect workers from toxic materials in the workplace because it applied only to the manufacturing sector. The OSHA standard does not cover other industry sectors such as agriculture, forestry, fishing, mining, construction, transportation and public utilities, wholesale trade, retail trade, the service industry, and government. Testimony indicated that the manufacturing sector has the largest component of chemical source injuries and illnesses of these industries with 47.1 percent of the total.

Proponents of the bill draft also stated the OSHA trade secret provisions greatly weakened that program by making it too difficult to gain needed chemical information in emergency situations. The proponents believed the OSHA hazard communication standard did not preempt state action and the state could enact a worker right-to-know law.

The bill draft was opposed by the Greater North Dakota Association because of a belief the OSHA standard was adequate to protect workers and because double and conflicting regulation would result if both the states and the federal government had different hazardous communication programs. The Greater North Dakota Association favored the implementation of a uniform national program.

The committee solicited and received correspondence from OSHA which stated the bill draft to establish a state level hazard communication program could be successfully challenged as preempted by the OSHA standard.

Hazardous Waste Management

In 1976 the Resource Conservation Recovery Act (RCRA) was passed by Congress to provide "cradle-to-grave" controls for hazardous waste, i.e., from the time of generation to the time of disposal. The Act requires the Environmental Protection Agency (EPA) to issue regulations that establish:

1. Criteria for the identification and listing of hazardous wastes.
2. Standards applicable to generators of hazardous waste.
3. Standards applicable to transporters of hazardous waste.
4. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
5. Permits for treatment, storage, or disposal of hazardous waste.
6. Guidelines for state hazardous waste programs.

The Act authorizes the states to administer the federal program. To receive full program authorization and administrative control of the federal program, a state must have a hazardous waste regulatory program that is substantially equivalent to the federal program.

In December 1980 Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This law, known as "Superfund," created a five-year, $1.6 billion fund which will be used to clean up about 400 sites nationwide.

North Dakota Century Code Chapter 23-20.3 is the law of this state relating to hazardous waste management. The administration of this chapter is placed with the Department of Health. The department has rulemaking authority over the management of hazardous waste and the power to enter into agreements or letters of understanding with other states or federal agencies regarding responsibilities for regulating hazardous waste.

Under this authority and that granted under RCRA the department adopted in 1980 the federal hazardous waste management regulations and the state received from EPA in December 1980 interim authorization to administer its own hazardous waste management program. The 1981 Legislative Assembly authorized the department to adopt state rules, which were adopted effective January 1, 1984. The department engaged in lengthy negotiations with EPA to demonstrate the ability of the state to provide a substantially equivalent state program. Full authorization for the state program was granted by the EPA and published in the Federal Register on October 5, 1984. North Dakota was the fifth state in the nation to receive full authorization for a state hazardous waste management plan. The committee received testimony from the department that this state's hazardous waste management program is in good shape and that no further corrective or enabling legislation is needed at this time.

The committee received information concerning specific hazardous waste problems in the state. The Department of Health indicated that while polychlorinated biphenals (PCB's) were once a problem in this state their disposal under the state hazardous waste management plan is now in good shape. There exist specific records of where and how these materials are disposed. Testimony from the department also addressed the improper disposal of certain hazardous wastes at the Jamestown landfill. The department will be monitoring that landfill indefinitely under the state hazardous waste management program.

The committee also received information concerning the transportation of hazardous materials in and through the state. This state is a preferred route for the traffic of low-level radioactive waste to the Hanford, Washington, disposal facility. The committee reviewed the operations of the State Hazardous Materials Coordinator office in the Highway Patrol. The State Hazardous Materials Coordinator office was created under Executive Order No. 1981-13 on November 17, 1981, and has authority to:

1. Investigate and research problems which may face state and local agencies charged with handling emergencies involving hazardous materials.
2. Develop and make available training programs for emergency services personnel at state and local levels.
3. Develop a state emergency response plan to provide specifically for the timely and effective response to hazardous material emergencies.
4. Assist local governments in development of hazardous material emergency plans and procedures.
5. Assist and cooperate with state and local authorities in the investigation of possible violations and enforcement of those laws relating to hazardous materials.
6. Coordinate the state government's response to incidents involving hazardous materials and give such binding directives to state and local governmental personnel and private individuals in the event of an incident as the coordinator deems necessary to protect the lives and property of the people of the state of North Dakota.

Conclusions

The committee makes no recommendation on worker right-to-know legislation because of the question whether the legislation would be immediately challenged by OSHA as preempted and because of a concern over its broad application especially over the agricultural sector.

The committee makes no recommendation as a result of its study of hazardous waste management in the state, finding that the state hazardous waste management plan under the Department of Health appears to be in good shape.

WATERFOWL PRODUCTION AREAS AND REFUGES

Federal Law — Background

The federal program for the acquisition of land for migratory bird refuges began with the passage of the 1929 Migratory Bird Conservation Act. That Act provided that the federal government may not acquire such land unless consent is given by the prevalent state. North Dakota gave its legislative consent in 1931. The 1934 Migratory Bird Hunting Stamp Act provided a revenue source to the federal government for the refuge acquisition program. Under the Act, "duck stamps" were sold and the proceeds were placed in the migratory bird conservation fund.

In 1958 the Migratory Bird Hunting Stamp Act was amended to allow the Secretary of the Interior to acquire land or interests in land for "waterfowl production areas." The 1958 amendment provided that no legislative consent was required for such acquisitions.

In 1961 Congress authorized a $105 million interest-free loan to the migratory bird conservation fund for a crash program for acquisition of waterfowl production areas. The 1961 Act, however, also provided that no land could be acquired using the migratory bird conservation fund unless the acquisition is consented to by the Governor or an appropriate state agency.

Because of the 1961 Act both legislative consent and gubernatorial consent is necessary for federal acquisition of waterfowl refuges, but state legislative consent is not necessary for the acquisition of waterfowl production area.

Between 1961 and 1977 Governor Guy and Governor Link approved the acquisition of approximately 1.2 million acres of waterfowl production area easements by the federal government through the United States Fish and Wildlife Service.

In 1964 Congress enacted the Revenue Refuge Sharing Act. This Act provides that the net receipts of the federal government under the National Wildlife Refuge System are to be used to make payments in lieu of taxes to counties in which refuges are located.

State Law

The committee also reviewed the laws enacted by the 1977 Legislative Assembly which:

1. Withdrew unconditional consent to federal refuge acquisitions under the Migratory Bird Conservation Act. (Recommended by the 1975-76 interim Agriculture Committee.)
2. Established procedures for the participation of county commissions in the decisionmaking process concerning federal fee and easement acquisitions. (Recommended by the 1975-76 interim Agriculture Committee.)
3. Placed certain limitations on easements acquired by the United States with moneys from the migratory bird conservation fund. (Recommended by the 1975-76 interim Agriculture Committee.)
4. Provided that state consent to federal acquisitions for migratory bird refuges would be nullified if the Department of the Interior did not agree to and comply with the limitations placed upon easement acquisitions. (Recommended by the 1975-76 interim Agriculture Committee.)
5. Limited all easements in North Dakota to 99 years and required that all easements "shall be properly described."

The result of the enactment of these laws was the suspension by the Fish and Wildlife Service of the waterfowl production area acquisition program in North Dakota and the declaration by Governor Olson that no further wetlands acquisitions would be approved until all mitigation and enhancement lands for the Garrison Diversion Unit were acquired.

North Dakota v. United States

The federal government filed suit challenging the

1977 laws. In North Dakota v. United States, 75 L.Ed.2d 77, 103 S.Ct. 1095 (1983), the United States Supreme Court held:

1. The Secretary of the Interior must secure approval from the Governor or the appropriate state agency before purchasing land or interests in land for waterfowl production areas.
2. The consents of Governor Guy and Governor Link for waterfowl production area easement acquisition could not be withdrawn.
3. The 1977 state laws could not place additional restrictions on land acquired pursuant to the authorization of Governor Guy and Governor Link.

Committee Considerations

The committee reviewed the history and the issues that have developed since the passage of the state and federal laws, including the incorporation of waterfowl production areas by the federal government under the National Wildlife Refuge System Administration Act of 1966 into the National Wildlife Refuge System. This Act established criminal penalties for violations of easements held under that system despite the fact the easement agreements with landowners in the state had no such provision when entered into. The committee also received information on landowner claims that certain misrepresentations were made by federal agents seeking to purchase waterfowl production area easements concerning permitted farming practices, the problems associated with the opposition of the Fish and Wildlife Service to the Starkweather Watershed Project, and the controversies concerning the 1965 Garrison Diversion Unit fish and wildlife mitigation and enhancement plan which was rejected by the Fish and Wildlife Service.

After reviewing the background and history of the issues surrounding federal waterfowl production areas and refuges in this state the committee focused on current issues including easement acreage delineation, the Federal Refuge Revenue Sharing Act payments in lieu of taxes to counties, proposed technical changes in the wildlife refuge and waterfowl land acquisition laws in this state, and whether the Constitution of the United States requires state consent prior to federal acquisition of land in a state.

Waterfowl Production Area Easement Acreage Delineation

One of the major issues surrounding waterfowl production areas in the state is the dispute over how many acres of these easements have actually been acquired by the federal government. The state argues that while the Fish and Wildlife Service received gubernatorial consents to acquire easements over 1,278,201 acres of wetlands, they actually acquired over 4,788,300 acres between 1958 and 1977. The state has argued that, although the Fish and Wildlife Service identified and paid for only 764,522 acres of wetlands at the time the easements were acquired, they are actually asserting control and regulation over 4.8 million acres. The Fish and Wildlife Service has stated that they actually control approximately 758,000 acres of easement wetlands and the 4.8 million figure is inaccurate.

The dispute appears to have arisen from the state's assertion that, while the easement agreements make clear that the restrictions on activities on that land apply only to the wetland acres, the actual permanent easement documents contain legal descriptions of the land containing the wetlands totaling approximately 4.8 million acres. The state has claimed the Fish and Wildlife Service is asserting control over all the upland areas in the tracts described in the permanent easements and is applying the easement restrictions to the upland acres in the tracts as well as to the wetland areas.

A joint federal-state committee was established by Governor Olson and former Secretary of the Interior James Watt for the purpose of discussing the delineation of the actual number of acres of wetlands controlled by the Fish and Wildlife Service under easements acquired prior to 1976. The committee members are Gaylen Buterbaugh, Fish and Wildlife Service Regional Director; John R. Little, Department of the Interior Regional Solicitor; Gilbert Key, Fish and Wildlife Service, Bismarck; State Game and Fish Commissioner Dale Henegar; State Commissioner of Agriculture Kent Jones; and State Special Assistant Attorney General Murray G. Sagsveen.

In North Dakota v. United States, the United States Supreme Court addressed the dispute over the number of wetland easement acres controlled by the Fish and Wildlife Service. That court stated in a footnote:

> As the easement agreements make clear, however, the restrictions apply only to wetland areas and not to the entire parcels. . . . The fact that the easement agreements include legal descriptions of much larger parcels does not change the acreage of the wetlands over which easements have been acquired.

In 1982 an agreement was reached between the state and the Fish and Wildlife Service to delineate the wetland areas under easement. As of the last meeting of the committee a pilot study program to delineate the actual number of wetland easement acres in existence was being conducted by the Fish and Wildlife Service.

Payment in Lieu of Taxes

Federal law provides for the annual disposition of National Wildlife Refuge System revenue to local governments resulting from the sale or disposition of animals, timber, hay, grass, or other products of the soil, minerals, sand, or gravel, and moneys resulting from leases for public facilities in the National Wildlife Refuge System. This payment in lieu of taxes program was implemented because lands held in fee by the federal government under the National Wildlife Refuge System are not taxable by local or state governments. The moneys are placed in a separate fund in the United States Treasury for disposition to local units of government.

The "National Wildlife Refuge System" includes those lands and waters administered by the Secretary of the Interior as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed as endangered species, wildlife refuges, game refuges, wildlife management areas, and waterfowl production areas.

The Secretary of the Interior is to make annual payments to each county in which any National Wildlife Refuge System land owned in fee is located. Each county is to be paid the greater of the following amounts:

1. An amount equal to the product of 75 cents multiplied by the total acreage owned by the United States in fee within such county.
2. An amount equal to three-fourths of one percent of the fair market value, as determined

by the Secretary of the Interior, of the acreage owned in fee by the United States within such county, excluding any improvements made after the date of federal acquisition.

3. An amount equal to 25 percent of the net receipts collected by the Secretary of the Interior in connection with the operation and mangement of the area owned in fee by the United States during a fiscal year. However, if a fee area is located in two or more counties, the amount each county is entitled to shall be determined according to the total acreage within each county.

Additionally, at the end of each fiscal year, the Secretary of the Interior is to pay each county in which any reserve area is situated an amount equal to 25 percent of the net receipts collected in connection with the operation and management of the reserve area during the fiscal year.

The committee examined two issues relating to the payments received by counties under the Refuge Revenue Sharing Act. The first issue concerns the possible undervaluation of the market value of wetland acres held by the Fish and Wildlife Service in fee. The fair market value of these lands is part of the formula used to compute the in lieu tax payment made to the county under the Refuge Revenue Sharing Act. The committee received testimony indicating that the fair market value figures used by the Fish and Wildlife Service for payments in lieu of taxes under the program for fiscal years 1981 through 1982 were substantially lower than other fair market value computations for agricultural land in the state. The Fish and Wildlife fair market value figures for these lands varied but on average the Fish and Wildlife Service figure was between 40 to 50 percent lower than the fair market value figures for agricultural land. These lower fair market value figures result in substantially lower entitlement payments to counties under the Refuge Revenue Sharing Act.

The Fish and Wildlife Service bases its fair market value computations on the "highest and best use" of the land in question. The Fish and Wildlife Service disagreed with the comparison of the market value of Fish and Wildlife Service fee lands with that of agricultural land because these fee lands often consist of a mixture of marshland, which is not suited to agriculture, as well as cropland and grassland. The Fish and Wildlife Service offered to assist the committee in any study that might be conducted on the issue.

The second issue relating to the payments in lieu of taxes to counties under the Refuge Revenue Sharing Act is the failure of the federal government to consistently pay 100 percent of the entitlement to the counties from year to year. The counties, for example, received 73 percent of the entitlement in 1976, 74 percent in 1977, 52 percent in 1978, 76 percent in 1979, 100 percent in 1980, 87.6 percent in 1981, and 90.6 percent in 1982.

Under the Refuge Revenue Sharing Act payments in lieu of taxes are to be paid from the revenue received from the land itself. If these revenues are insufficient to pay 100 percent of the entitlement, the Congress must appropriate additional moneys to make up the deficiency. The committee received information concerning the budgeting process of the Fish and Wildlife Service relating to these payments in lieu of taxes. The Fish and Wildlife Service and the North Dakota Wildlife Society testified that even with less than 100 percent payment of the entitlement the counties are receiving an amount equal to or greater than they receive from comparable lands in private ownership.

The committee also received information indicating that the federal government has not consistently paid 100 percent of the payments in lieu of taxes entitlements to counties under 31 U.S.C. 1601 for lands held in fee by the Forest Service, Bureau of Land Management, and other federal agencies.

Federal Constitutional Requirement for State Consent for Federal Land Acquisition

The committee considered whether Section 8 of Article 1 of the Constitution of the United States requires state consent for all federal land acquisitions in a state. Section 8 provides:

> The Congress shall have the power: To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings . . . (emphasis supplied).

This constitutional provision has been generally interpreted by the courts to apply to questions of whether the federal government can exercise exclusive jurisdiction over lands purchased in a state and not whether state consent is required before the federal government can acquire land within a state.

Technical Amendments

The committee reviewed proposed amendments to the laws relating to this state's consent to federal wildlife area land acquisitions.

An amendment of NDCC Section 20.1-02-18 to require gubernatorial consent for each proposed acquisition by the federal government of land or water for migratory bird conservations was reviewed. Testimony to the committee indicated there have been attempts to use other funding sources for waterfowl area acquisitions to avoid the necessity to obtain gubernatorial consent.

An amendment of NDCC Section 20.1-02-18.1 to eliminate language requiring an affirmative recommendation from the board of county commissioners of the county where a waterfowl area acquisition is sought before the Governor may approve the acquisition was considered by the committee. This is a technical amendment to have state law comply with the United States Supreme Court decision in North Dakota v. United States that no additional state restrictions could be imposed on these land acquisitions.

The committee examined an amendment of NDCC Section 20.1-02-18.2 to eliminate language which states that failure by the Department of the Interior to comply with the provisions in that section relating to negotiations of provisions of waterfowl production area easement agreements results in the nullification of North Dakota's consent to the acquisition of migratory bird conservation by the federal government. This is also a technical amendment to comply with North Dakota v. United States in that no additional conditions can be imposed by the state on these federal waterfowl land acquisitions.

The committee examined a proposal to repeal NDCC Section 20.1-02-17.2 which provides that land acquired by the State Game and Fish Department qualifies as mitigated acres for the Garrison Diversion Project. Testimony indicated the Fish and Wildlife Service has adopted a policy that no federal moneys would be made available to the Game and Fish Department for wildlife land acquisition because this law results in the federal government helping to pay for mitigation acres for the Garrison Diversion Unit.

The committee also considered a proposal to amend NDCC Section 20.1-02-18.3 to eliminate the requirement that any proposed acquisition of land or interests in land using moneys from the migratory bird conservation fund must first be approved by the Legislative Assembly. Current law requires both gubernatorial and legislative consent. The argument in favor of the amendment is that the Legislative Assembly is not structured to review every proposed acquisition.

Recommendations

The committee recommends House Concurrent Resolution No. 3005 urging the Congress of the United States to appropriate in the future moneys sufficient to pay 100 percent of the payments in lieu of taxes under the Wildlife Refuge Revenue Sharing Act. The resolution was recommended because the eligible counties in this state are entitled to receive the total amount authorized under the law and because it is ultimately up to Congress to fund any deficiencies necessary for the payment of 100 percent of that entitlement.

The committee recommends House Bill No. 1079 to make technical amendments to some of the laws relating to this state's consent to wildlife area land acquisitions by the federal government, including the following changes:

1. Section 20.1-02-18 would be amended to require gubernatorial consent for each proposed acquisition by the federal government of land or water for migratory bird conservations. This amendment would make all such land acquisitions subject to gubernatorial consent and not just those using the migratory bird conservation fund moneys.
2. Section 20.1-02-18.1 would be amended to eliminate language requiring an affirmative recommendation from the board of county commissionrs of a county where a waterfowl area acquistion is sought before the Governor may approve the acquistion. The language conflicts with North Dakota v. United States.
3. Section 20.1-02-18.2 would be amended to eliminate language which states that, if the Department of the Interior fails to comply with the provisions in that section relating to negotiations of provisions of waterfowl production area easement agreements, North Dakota's consent to the acquisition of migratory bird conservation by the federal government will be nullified. The language conflicts with North Dakota v. United States.
4. Section 20.1-02-17.2 would be repealed. That section provides that land acquired by the Game and Fish Department qualifies as mitigated acres for the Garrison Diversion Project, to allow the Game and Fish Department to be eligible for federal funding for wildlife area land acquisitions.

POLITICAL SUBDIVISIONS "A" COMMITTEE

The Political Subdivisions "A" Committee was assigned three study resolutions. House Concurrent Resolution No. 3087 directed a study of funding of regional airports with an emphasis on the funding levels for political subdivisions in light of benefits to taxpayers and on access to alternative funding, including federal funds. House Concurrent Resolution No. 3062 directed a study of state laws and administrative rules on mobile homes and mobile home ownership, particularly with respect to laws and rules affecting mobile home taxation and mobile home parks. Finally, Senate Concurrent Resolution No. 4039 directed a study of present subdivision law, land use planning, land use regulation, and zoning law, with a consideration of possible consolidation and redrafting of the laws and the effect of the laws on all types of residential housing.

Committee members were Representatives James Gerl (Chairman), Rosie Black, Ralph C. Dotzenrod, Gerald Halmrast, Serenus Hoffner, Roger A. Koski, Arlin D. Meier, Jack Murphy, Dagne Olsen, and Adella J. Williams; and Senators Phillip Berube, LeRoy Erickson, and Thomas Matchie.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

REGIONAL AIRPORT FUNDING

Background

Funds for the operation and construction of airports are provided from three major souces — federal and state aid, local taxation, and service charges to users. The first two of these sources provided the grist for the mill of the committee's study on the topic of regional airport funding. State aid for airports is based on two major classifications of airports — air carrier airports and other public airports. An air carrier airport is one which is served by a scheduled airline or a commuter airline.

There are seven air carrier airports in North Dakota — Bismarck, Devils Lake, Fargo, Grand Forks, Jamestown, Minot, and Williston. Dickinson has had airline service in the past and, for the purpose of committee discussion, was considered an air carrier airport. State aid to air carrier airports is based on North Dakota Century Code (NDCC) Section 2-05-06.5, which mandates a block grant of $25,000 a year to air carrier airports with fewer than 20,000 passenger boardings a year (Devils Lake, Jamestown, and Williston; also Dickinson if airline service is reestablished). The other air carrier airports receive the remainder of the appropriation for state aid in proportion to the airport's share of total passenger boardings and departures. For the 1983-85 biennium, the appropriation for air carrier airports was $1 million. The public, non-air carrier airports in the state receive state aid on a 50-50 basis.

In accordance with the study directives, the committee concentrated its attention on funding for the air carrier airports. Data supplied to the North Dakota Aeronautics Commission by the seven air carrier airports, and Dickinson, indicates a need for capital improvements totaling $77.1 million by 1995. Although funding is already available for some of these projects, funding for other projects must still be found. A major source of funds will be the Federal Aviation Administration through its airport improvement program financed by airline ticket taxes. The Aeronautics Commission estimates this support to be $50.2 million through 1995. The remaining $26.9 million must be made up from state and local sources. Continuing the block grant at its present $1 million a year would yield $11 million, leaving $15.9 million to be made up from local sources such as mill levies. Additional funding needs also exist for some of the smaller air carrier airports for operational expenses as, in the smaller air carrier airports, user revenue does not pay the full cost of operations.

Another major source of funding for air carrier airports is a local property tax levied either by the city or county operating the airport. The Aeronautics Commission reported to the committee that the airports in Bismarck, Dickinson, Fargo, Grand Forks, Jamestown, and Minot have a city mill levy. The airport in Devils Lake has separate county and city mill levies, while the airport at Williston has a countywide levy. Property tax levies from outside the local tax base are not available for air carrier airports. So, even though surveys indicate that significant use is made of air carrier airports by people living outside the city or county providing property tax support for the airport, no direct support is provided from the home jurisdiction of these users. This problem is particularly acute along the Red River Valley, where significant use is made of the airports by Minnesota residents. For example, surveys by the Aeronautics Commission indicate that nearly a third of the airline passengers using the Fargo and Grand Forks airports are from out of state, and, in the case of the Fargo airport, about half of the airline passengers are from outside Cass County.

Because of the importance of interstate cooperation and funding of regional airports, the committee held one of its meetings in Fargo and invited officials from Minnesota to discuss interstate regional airport funding.

In considering possible methods for funding regional airports, the committee was aware of several basic principles. One principle was the unavailability of a boarding tax as a funding source. A boarding tax is prohibited by federal law as a condition for receiving federal aid. Federal aid is based on passenger boardings at air carrier airports, and more aid per passenger is provided at smaller air carrier airports such as those in North Dakota.

Establishment of Air Carrier Regions

One possibility the committee considered was dividing the state into eight regions, each defined and served in relationship to the eight present and former air carrier airports. Under NDCC Chapter 54-40, relating to joint exercise of governmental powers, counties and cities have long been able to establish multicounty airport operation and funding mechanisms. Because no counties or cities have ever taken advantage of this power, it was apparent to the committee that impetus for such action is required at the state level. The committee considered bill drafts which provided funding for each of the air carrier airports on the basis of a property tax throughout the region defined for each airport.

For one of the bill drafts, the regional boundaries were based on the eight planning regions used by executive branch agencies. In the other bill draft, the regional boundaries were based on the relative property tax base in each region, with each region being drawn so that the air carrier airport would receive the same share of property tax revenue, measured on a statewide basis, as the airport receives under the block grant program. These proposals generated considerable comment.

Proponents of the proposals argued that, since regional airports have not been formed under NDCC Chapter 54-40, the state should step in to provide regional funding. Proponents argued that the block grant funding had never been supplied at the levels requested by the Aeronautics Commission and the appropriated levels were generally inadequate to meet the funding needs of the air carrier airports. Witnesses testified that all air carrier airports have bonded indebtedness which must be repaid from property tax revenues. They suggested that a wider tax base would enhance repayment of these bonds.

Opponents of the proposal argued that it was unfair to support an airport on the basis of a property tax on property many dozens of miles from the airport. They also pointed out that many users of the airport do not pay property taxes, either because they live on tax-exempt property such as military installations, or because they live outside the state. On the other hand, other witnesses testified that passenger service is not the only service provided by air carrier airports and asked the committee to consider that agricultural and industrial supplies are shipped through air carrier airports to all parts of the state. Opponents of the property tax concept also argued that it was inappropriate to provide funding through property taxes and rather that airport funding needs should meet the test of the general fund appropriations process.

Concern was also expressed over the lack of input from outlying counties in the budget process of the air carrier airport. Further concern was expressed over the possibility that sales ratio studies would be required to implement the regional property tax proposal. Sales ratio studies are studies of whether assessment procedures are being applied on a consistent basis in different jurisdictions. Representatives of the Tax Commissioner advised the committee that sales ratio studies are no longer used. The air carrier region property tax concept was supported by representatives of most of the larger airports in the state. The committee also heard reports that the proposal was considered at an interstate meeting of airport administrators and received widespread support.

Other opponents of the proposal argued that the regional taxing concept effectively constitutes taxation without representation as representatives of the outlying counties had no input on the budget of the air carrier airport. One method the committee considered to meet this objection was to submit one of the bill drafts to a statewide election. The committee received advice from staff that such a legislative referral might be an unconstitutional delegation of legislative powers. The possibility of a legislative referral was considered during the 1979 session in the context of a family corporate farming bill, Senate Bill No. 2280. The Legislative Council staff had advised in a memorandum at that time that such a referral had not been considered by the North Dakota Supreme Court, but that in the majority of jurisdictions with constitutional initiative and referendum provisions such as North Dakota's, such a referral had been held to be an improper delegation of legislative powers. Later in the session, the Attorney General issued an opinion stating that "the Legislature is without the constitutional power to invoke the process of the Referendum" as contemplated in the bill. The legislative referral provision was removed by amendment, and the bill was passed by the Legislative Assembly but vetoed by the Governor. Because of the constitutional question, the committee also considered the possibility of allowing a referendum within each region on whether that region should have the tax levy.

County Airport Mill Levies

Under NDCC Sections 2-06-15 and 57-15-06.7(1), counties are given authority to levy a property tax of up to four mills for airport purposes. In counties with regional airports, this money can be used to support the regional airport. However, Section 2-06-15 limits the power to parts of the county where no city, park district, or township already has its own airport mill levy. One problem reported to the committee was that some townships would establish a small mill levy, such as one mill, and thus prevent the county from leying any of the county airport levy, even the remaining three mills of the four-mill limit. The committee considered two bill drafts dealing with this topic. One bill draft allowed counties to levy the difference between four mills and the levy imposed by any city, park district, or township. The other bill draft allowed counties to make a mill levy of at least two mills, regardless of whether a city, township, or park district had its own mill levy, and if there was no such local levy, a county could levy up to the full four mills. In the presence of a local levy, the potential maximum levy would be six mills. The committee heard testimony that, because of the exclusions under NDCC Section 2-06-15, only two-thirds of Cass County pays property taxes to help support Hector Field at Fargo despite the fact that the airport is used by residents from throughout the county. The committee heard numerous other instances of use of air carrier airports by people from outside the property tax base supporting the airport. For example, the committee was told that, based on takeoff and landing activity, the Grand Forks International Airport is one of the busiest airports in the Great Lakes region of the Federal Aviation Administration — only Chicago's O'Hare, Cleveland, and Minneapolis have more landings and takeoffs. This ranking is primarily because of the activity of the Aviation Department at the University of North Dakota.

Airport Toll Roads

The committee was particularly interested in finding a funding source that had its primary emphasis on users of an airport. Although the possibility of a boarding tax was foreclosed, the committee did consider a user fee in the form of establishing a toll road leading to air carrier terminal buildings. The committee heard testimony that some airports in the country charge such a toll. Some large airports charge every vehicle to enter the airport property and grant a refund to vehicles leaving the airport shortly after arrival, and a credit against parking charges for other vehicles. The committee considered a variation on this method.

Considerable concern was expressed over the impact of the proposal on people visiting an airport for

purposes other than taking a flight. Discussion was given to whether an exemption should be allowed for people just picking up passengers, military vehicles, employees of an airport, and other people visiting an airport for reasons such as using a restaurant or greeting a returning athletic team.

Constitutional Amendment — Statewide Mill Levy

The committee considered the possibility of amending the state constitution to allow a statewide mill levy to support air carrier airports. A constitutional amendment is necessary because of the present constitutional prohibition of statewide property taxes.

Resolutions to Neighboring States

The committee considered drafts of resolutions addressed to the neighboring states expressing the support of North Dakota for interstate regional airport funding and operation. Although the opportunities for interstate airport operation are most apparent along the Red River Valley, the committee realizes that such opportunities may eventually exist along the borders with Montana and South Dakota. Since the economic realities of many pairs of sister cities is that while people from each state may use an airport, the airport is located in only one state that provides funding; the committee believes it desirable to solicit support from both states for funding the operation of the airport.

Recommendations

The committee recommends four bills and three resolutions dealing with regional airport funding. Senate Bill Nos. 2091 and 2092 establish air carrier regions and allow a property tax levy, not exceeding one or two mills, throughout each region. The committee realizes that the Legislative Assembly will be required to choose between these two proposals. The primary difference in the proposals is the drawing of the regional boundaries and the provision, in Senate Bill No. 2092, for a statewide referendum, or if that is unconstitutional, a referendum in each region established under the bill. The regional referendum would be required if a majority of the counties in the proposed region requested the referendum. The levy limit is one mill in Senate Bill No. 2092. The levy limit is two mills in Senate Bill No. 2091.

Senate Bill No. 2093 allows counties to make a property tax levy for airports. The levy is limited to four mills for areas of a county in which there is no city, township, or park district airport mill levy. For areas of the county in which there is such a levy, the county levy may not exceed the difference between four mills and the other levy.

Senate Bill No. 2094 allows publicly operated airports to establish a toll road leading to air carrier terminal buildings. Establishment of the toll road is optional, and the airports are allowed to establish exemptions from the toll, and to allow the toll as a credit against parking charges.

Finally, the committee recommends Senate Concurrent Resolution Nos. 4007, 4008, and 4009, addressed to Minnesota, South Dakota, and Montana, respectively, and expressing the support of North Dakota for interstate regional funding and operation of airports.

MOBILE HOME REGULATION

Background

This committee's study of the mobile home park issue was concentrated on the landlord-tenant relationships in mobile home parks and the issue of property tax procedures applicable to mobile homes. Under NDCC Chapter 23-10, the State Laboratories Department has regulatory authority over sanitary conditions, safety, and health in mobile home parks. Chapter 23-10 was substantially amended as a result of a Legislative Council report to the 1977 Legislative Assembly that recommended granting more extensive regulatory authority to the State Laboratories Department. Under NDCC Section 23-10-02, mobile home park operators are allowed eight years to comply with newly enacted regulations.

Landlord-Tenant Relationships

Testimony was presented to the committee by mobile home owners with respect to practices engaged in by some mobile home park operators. The committee received complaints concerning mobile home park conditions, park operators who refuse to rent lots to anyone who has not purchased a mobile home from sales firms which own the parks, and park operators who require mobile home owners to either consign any sale of a mobile home to the operator or pay commission to the operator upon the sale of a mobile home.

The preceding paragraph summarizes reasonably well the kind of testimony the committee received on the topic of the relationships between landlords and tenants in mobile home parks. What is significant about the preceding paragraph is that it is paraphrased from the 1977 Legislative Council Report. From the testimony presented to the committee, it is apparent that landlord-tenant problems in mobile home parks are deep seated and long lasting. Tenants of mobile home parks presented a litany of complaints to the committee.

A common theme of the complaints is that in most cities the occupancy rate of mobile home parks is so high that there is a "seller's market." Because it costs typically $300 to $500 to move a mobile home, and because of the tight market for mobile home lots, many tenants believe they are without effective bargaining power in dealing with landlords. One witness characterized the landlord-tenant relationship in a mobile home park as akin to a marriage, primarily because of the difficulty of moving.

The problems cited were numerous and varied. Among these were that landlords enforce park rules and regulations unfairly, that landlords provide inadequate snow removal of streets in the park, that landlords prohibit political campaigning in parks, that landlords retaliate against tenants for forming tenant organizations, that landlords impose rent hikes without justification or with specious justification, that landlords are unavailable to talk with tenants, that landlords veto proposed sales of mobile homes, that inadequate water pressure is provided, and so on. One tenant even reported, undisputed by the landlord who was also at the meeting, that the landlord levied a charge for natural gas despite the fact that the landlord had earlier required tenants to obtain and pay for natural gas from the local utility. Other tenants reported that many of their fellow tenants were reluctant to testify to the committee because of fear of retaliation.

The general consensus was that some action had to be taken and much of the committee's discussion centered around the nature of that action. The primary focus of this discussion was a bill draft patterned

after the Arizona law regulating the landlord-tenant relationship in mobile home parks. The Arizona law was itself patterned after the Uniform Landlord-Tenant Act which is applicable to apartment situations. Landlords expressed considerable concern over the bill draft. One of the provisions of the bill draft that evoked considerable comment is a provision allowing tenants to make repairs to the premises and deduct the expense from the rent. Landlords characterized this provision as authorizing rent strikes.

Mobile Home Taxation

The interim study eight years ago recommended changes in the procedure applicable to property taxation for mobile homes. As a result of those recommendations, many of the procedures governing appeal and assessment for real property taxes were made the same for mobile homes as for site-built homes. However, one issue left unresolved by the changes suggested eight years ago is the tax decal system. Under NDCC Chapter 57-55, a mobile home owner is required to obtain a decal evidencing payment of the property tax. The owner is also required to pay the property tax in advance of the property tax year. This is different from property taxation for site-built homes, in which the tax is paid after the tax year has expired and no decal is required. The justification generally given for the difference in that taxation method is that mobile homes can be moved, thus removing the object of the tax and the ability to collect and enforce the tax.

The tax decal system and the requirement that property taxes be paid in advance both evoked heartfelt testimony from mobile home owners, some saying they even prefer jail to displaying a decal they considered demeaning. Mobile home owners argued that today's mobile homes are mobile in name only and most are permanently affixed to a foundation, or certainly moved only rarely. Mobile home owners questioned why there should be a distinction based on an artificial distinction between the kinds of property.

Tax collectors described collection difficulties centered around the mobile home tax. They pointed out that since the tax is not a lien on the mobile home, the only remedy to collect unpaid taxes is to bring an action in court. Usually these actions are brought in small claims court because that is more efficient and the amount in controversy is usually relatively small, frequently under $300. Such relatively small amounts do not justify the expense of a district court action. One problem reported with the small claims procedure is that the action must be brought in the county where the defendant lives. Thus a defendant who has moved a mobile home out of the taxing county could not be sued in small claims court in the county where the tax is due.

The tax collectors conceded that collection of taxes on site-built homes also has its own difficulties. They pointed out, however, that in the case of a site-built home, or an undeveloped lot, there is always some property which can be attached for the unpaid taxes. This is a significant advantage lost in the case of a mobile home.

Recommendations

The committee recommends two bills dealing with mobile homes. House Bill No. 1080 establishes standards for the landlord-tenant relationship in mobile home parks. It is patterned after a similar law enacted in Arizona. Among its provisions are a requirement that rental agreements be in writing; a limitation on security deposits to one month's rent; a provision allowing tenants to make repairs relating to health or safety if the landlord fails to do so and to deduct the expense of those repairs, but limiting the expenditure to one month's rent; a prohibition of retaliatory practices on the part of landlords; a prohibition of unconscionable practices and lease provisions; a prohibition of lease provisions that attempt to avoid a landlord's liability; a requirement that the tenant maintain the premises properly, and allowing the landlord damages on the tenant's failure to do so; a duty of the landlord to maintain fit premises, and allowing the tenant damages on the landlord's failure to do so; a requirement that moving companies notify the landlord before moving a mobile home; a requirement that rules adopted by the landlord be reasonable; a prohibition of access by the landlord to a mobile home without the tenant's consent; and remedies to the landlord for improper abandonment by the tenant.

House Bill No. 1081 addresses the taxation issue. It makes display of the decal optional and allows for payment of property taxes on the same time frame as for site-built homes, namely, after the property tax year rather than before it. To enhance the collectibility of the taxes, the bill also establishes a lien on the mobile home for unpaid taxes.

LAND USE PLANNING STUDY

The committee's emphasis in this study was an analysis of the land use planning and zoning statutes, with a goal of consolidating and simplifying the statutes but making relatively few substantive changes. The primary impetus behind the study was the many conflicting provisions in the North Dakota Century Code regulating the procedure used for zoning and planning at the various levels of local government — county, city, and township. Present law has many variations and inconsistencies between the procedures. For example, application deadlines and notice requirements are frequently quite different, based solely on the kind of subdivision involved. The committee believes there should be parallel procedure for zoning matters at the various levels of local government.

Aside from the technical issues such as deadlines and publishing procedues, the committee did consider a few substantive changes. Chief among these was the composition of the planning commissions and zoning commissions. Under present law, planning commissions and zoning commissions can consist of members who do not live in the geographical territory regulated by the commission. For example, under NDCC Section 40-48-03, a city planning commission consists of certain city officials such as the city attorney. It is possible that the city attorney may not be a resident of the city, yet by the statute serve on the planning commission. On the other hand, county planning commissions have no jurisdiction within city limits of cities with their own planning commissions, but under NDCC Section 11-33-04, are required to include among the members two residents of the county seat. Several commentators objected to these provisions as allowing regulation without representation.

Another substantive matter considered by the committee was whether zoning matters should be the subject of initiative and referendum. The committee was advised by city officials that zoning matters are

generally considered administrative matters not subject to local initiative and referendum. Because the system of initiative and referendum is such an important part of governmental philosophy of this state, proponents suggested that similar remedies should be provided at the local level for zoning matters. Under NDCC Chapter 40-12, for example, certain kinds of cities are allowed to have initiatives and referendums for their ordinances.

Recommendation

The committee recommends House Bill No. 1082, which repeals most of the existing planning and zoning law and replaces it with new provisions applying consistent procedure among the various levels of government. Tables attached to this report show where sections of the existing law have been distributed in the bill and where sections of the bill were derived from. The bill makes technical substantive changes by establishing uniform 10-day notice periods in substitution for a variety of notice periods and methods throughout present zoning and planning law. The bill also establishes a consistent level of vote by a governing body necessary to override a zoning commission, namely two-thirds. This is a substitution for various levels such as three-fifths, three-fourths, and four-fifths. The bill also makes substantive changes by requiring members of the planning and zoning commission to be qualified electors of the geographical territory regulated by that commission. Finally, the bill establishes initiative and referendum for planning and zoning matters.

MOBILE HOME SITING

One issue the committee considered that, although technically part of the planning and zoning study, is of sufficient importance to merit separate reporting. This is the issue of siting of mobile homes. Fundamentally it is a policy question, namely whether the state should enact a law requiring local subdivisions to allow mobile homes to be sited in any residential neighborhood if the mobile home complies with federal regulations governing manufactured homes and local regulations governing exterior appearance. The committee devoted a major portion of its study and analysis to this question, and, although no formal motion was made to resolve the matter the committee considered a proposal to require cities to allow mobile homes to be placed in any residential neighborhood, and limiting local regulation to exterior appearance and construction.

The committee heard testimony from manufacturers of mobile homes attesting to what the manufacturers asserted was fully equal standards of quality and construction. At the meeting held in Fargo because of the regional airport funding study, the committee also toured some mobile homes in Riverside and saw firsthand the fruits of the efforts of the manufactured housing industry.

On the other hand, the committee heard considerable testimony from building inspectors and builders of site-built homes to the effect that manufactured homes do not live up to the standards of quality of site-built homes. There was considerable dispute as to whether claims of appreciation in value, energy efficiency, and general aesthetic value, on behalf of the manufactured homes were justified. Discussion was given to the issue of whether the place of construction of a home should be relevant in the context of zoning. Proponents of allowing mobile home siting argued that providing separate zoning just for mobile homes constituted ghettoization. On the other hand, proponents of site-built homes argued that character of a neighborhood is a legitimate issue for zoning and that allowing unregulated siting of mobile homes would adversely affect the character of many residential neighborhoods. Opponents of the proposal said it will be impossible to enforce a zoning regulation that considered only the exterior appearance of mobile homes. They expressed the belief that this would end up in a hopeless web of litigation over whether a particular mobile home met local aesthetic standards.

After hearing all the testimony on this topic, the committee took no formal action on the proposal and therefore makes no recommendation on the topic.

DERIVATION TABLE

Bill Section	Patterned After NDCC Section
1	11-33.2-01
	40-48-01
	new
2	11-33-03
	40-47-03
	58-03-12
3	40-47-01.1
	40-48-18
	40-48-26
4	11-33-20
5	11-33-04
6	40-47-06
	40-48-03
	40-48-04
	40-48-05
	40-48-06
7	58-03-13
8	11-33-05
9	40-48-13
	40-48-14
10	new
11	40-48-15
12	40-48-17
13	40-48-07
	57-15-06.5
14	11-33-18
15	11-33-01
	11-33-02
	11-33.2-02
	40-47-01
	40-47-02
	58-03-11
16	11-33-07
17	11-33-08
	11-33-09
	40-47-04
	40-47-05
18	40-12-02*
19	40-12-03*
20	40-12-04*
21	40-12-05*
22	40-12-06*
23	40-12-07*
24	40-12-08*
25	40-12-09*
26	40-12-10*
27	40-12-11*
28	40-12-12*
29	11-33-13
30	11-33-14
31	40-47-07
32	40-47-08
33	40-47-09
34	40-47-10
35	11-33-12
	11-33.2-09
	40-47-11
	40-48-12
	58-03-15
36	40-48-02
	40-48-08
	40-48-16
	40-48-19
37	11-33-06
	40-48-09
38	40-48-10
	40-48-20
39	40-48-11
	40-48-21
40	40-48-22
	40-48-28
41	40-48-30
42	40-48-31
43	40-48-32
44	40-48-33
45	40-48-34
46	40-48-35
47	40-48-36
48	new
49	40-48-37
50	11-33.2-04
	11-33.2-11
	11-33.2-13
51	11-33.2-05
52	11-33.2-06
53	11-33-11
	11-33.2-08
54	11-33.2-12
55	40-50-01
56	40-50-03
57	40-50-04
58	11-33.2-14
59	40-50-05
60	40-50-12
61	40-50-13
62	40-50-14
63	40-50-15
64	40-50-16
65	40-50-17
66	40-58-18
67	40-50-19
68	40-50-19.1
69	40-50-19.2
70	40-50-20
71	40-50-26
72	11-33-16
	11-33.2-10
73	11-33-17
	40-47-12
74	11-33-21
	11-33.2-15
	40-48-23
	40-48-38
	58-03-14

*Not repealed

DISTRIBUTION TABLE
Distribution of Repealed Provisions

NDCC Section	Bill Section
11-33-01	15
11-33-02	15
11-33-03	2
11-33-04	5
11-33-05	8
11-33-06	37
11-33-07	16
11-33-08	17
11-33-09	17
11-33-10	Omitted
11-33-11	53
11-33-12	35
11-33-13	29
11-33-14	30
11-33-15	R-1969
11-33-16	72
11-33-17	73
11-33-18	14
11-33-19	Omitted
11-33-20	4
11-33-21	74
11-33.2-01	1
11-33.2-02	15
11-33.2-03	Omitted
11-33.2-04	50
11-33.2-05	51
11-33.2-06	52
11-33.2-07	Omitted
11-33.2-08	53
11-33.2-09	35
11-33.2-10	72
11-33.2-11	50
11-33.2-12	54
11-33.2-13	50
11-33.2-14	58
11-33.2-15	74
40-47-01	15
40-47-01.1	3
40-47-02	15
40-47-03	2
40-47-04	17
40-47-05	17
40-47-06	6
40-47-07	31
40-47-08	32
40-47-09	33
40-47-10	34
40-47-11	35
40-47-12	73
40-47-13	Omitted
40-48-01	1
40-48-02	36
40-48-03	6
40-48-04	6
40-48-05	6
40-48-06	6
40-48-07	13
40-48-08	36
40-48-09	37
40-48-10	38
40-48-11	39
40-48-12	35
40-48-13	9
40-48-14	9
40-48-15	11
40-48-16	36
40-48-17	12
40-48-18	3
40-48-19	36
40-48-20	38
40-48-21	39
40-48-22	40
40-48-23	74
40-48-24	Omitted
40-48-25	Omitted
40-48-26	3
40-48-27	Omitted
40-48-28	40
40-48-29	Omitted
40-48-30	41
40-48-31	42
40-48-32	43
40-48-33	44
40-48-34	45
40-48-35	46
40-48-36	47
40-48-37	49
40-48-38	74
40-50-01	55
40-50-02	R-1979
40-50-03	56
40-50-04	57
40-50-05	59
40-50-06	Omitted
40-50-07	Omitted
40-50-08	Omitted
40-50-09	Omitted
40-50-10	R-1975
40-50-11	Omitted
40-50-12	60
40-50-13	61
40-50-14	62
40-50-15	63
40-50-16	64
40-50-17	65
40-50-18	66
40-50-19	67
40-50-19.1	68
40-50-19.2	69
40-50-20	70
40-50-21	Omitted
40-50-22	Omitted
40-50-23	Omitted
40-50-24	Omitted
40-50-25	Omitted
40-50-26	71
40-50-27	Omitted
57-15-06.5	13
58-03-11	15
58-03-12	2
58-03-13	7
58-03-14	74
58-03-15	35

R = Repealed

POLITICAL SUBDIVISIONS "B" COMMITTEE

The Political Subdivisions "B" Committee was assigned one study resolution. Senate Concurrent Resolution No. 4006 directed a study to determine the powers and rights to be granted to political subdivisions under the new Article VII of the Constitution of North Dakota as approved by the voters of the state on June 8, 1982.

Committee members were Representatives Bruce W. Larson (Chairman), Charles C. Anderson, Pat Conmy, David W. Kent, Ruth Meiers, Marshall W. Moore, David P. O'Connell, Bob O'Shea, and Janet Wentz; and Senators William S. Heigaard, John M. Olson, and Gerald Waldera.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

Background

The measure that created the new Article VII of the constitution and repealed the previous Article VII was placed on the 1982 primary election ballot by passage of 1981 Senate Concurrent Resolution No. 4002, introduced by the Legislative Council after study and recommendation by the 1979-80 interim Judiciary "C" Committee. The final report of that interim committee listed three major changes that would result from adoption of the new political subdivisions article. Those changes were:

1. A requirement that the Legislative Assembly provide for the extension of home rule to county government.
2. A provision that a political subdivision could transfer, or revoke the transfer, to the county in which it is located any of its powers or functions as provided by law or home rule charter.
3. A provision that county offices would no longer have constitutional status.

Home Rule

Section 6 of Article VII of the constitution requires the Legislative Assembly to provide by law for home rule powers in counties and cities. Home rule powers for cities were required to be provided by a constitutional amendment approved in 1966 and were provided by enactment in 1969 of what is now North Dakota Century Code (NDCC) Chapter 40-05.1. The constitutional provision approved in 1982 extended the home rule provision requirement to counties, but such powers have not been provided by statute.

Traditional legal theory is that political subdivisions are created by the state and have only those powers expressly delegated by the state, with no inherent power of their own. The home rule concept allows a political subdivision to adopt a home rule charter and thereafter to govern itself except in those areas where state law has general application to the entire state. Under the traditional concept a county may exercise only expressly granted powers while under the home rule government approach a home rule county may exercise any power not expressly forbidden by state law.

Transfer of Powers

Section 10 of Article VII of the constitution provides that "(a) political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer." This provision is apparently self-executing, that is, it requires no act of the Legislative Assembly to implement it.

Constitutional Status of Offices

Article VII does not contain references to county officers, which were contained in the repealed portion of the constitution, and thus the status of county offices is determined by statute. Former Article VII, which was repealed with the enactment of the new Article VII in 1982, provided that each county have a register of deeds, auditor, treasurer, sheriff, state's attorney, clerk of district court, and superintendent of schools, all of which were to be elected. The repeal and the enactment of the new Article VII removes the constitutional status of these county offices and allows the Legislative Assembly the power to allow, by statute, county option on filling these offices. Section 9 of Article VII provides for elimination of elected offices in counties by petition of electors. No other method is provided by the constitution but the Legislative Assembly may provide by statute for alternative methods to eliminate or combine county offices. Existing statutory authority must be considered relating to changing county offices. NDCC Section 11-10-02 sets out the county offices which must be filled in each county. In addition, hundreds of NDCC sections refer to functions to be performed by specific county officers.

Optional Forms of Government

Section 7 of Article VII of the constitution requires the Legislative Assembly to provide for optional forms of government for counties. Three basically different forms of county government, with unlimited variations, are in use in the United States. The county manager, the limited executive or chief administrative officer, or the elected executive forms of county government are the three basic types of county government in use. North Dakota Century Code Chapter 11-09 provides for county managership and Chapter 11-08 provides for the county consolidated office form of government. At present there are no counties in the state which utilize either the county manager form or the consolidated office form of government. All 53 counties in North Dakota presently function under the elected executive form of government, with a three- or five-member county commission as the chief executive body.

Testimony

The committee investigated the resolution and ordinance power of counties, powers of home rule cities, court decisions interpreting powers of home rule cities, the property tax deadlines of counties, powers and duties of county officers, county road authority, county licensing authority and fees, and questions of potential jurisdictional disputes between home rule counties and cities. The committee also received testimony from county officials, the Association of Counties, and the Bureau of Governmental Affairs of the University of North Dakota on all areas of committee consideration.

Recommendations of the Bureau of Governmental Affairs

The director of the Bureau of Governmental Affairs of the University of North Dakota recommended that county home rule provisions be patterned after state law providing for city home rule. This would allow reference to city home rule experience and judicial precedent. Powers provided for counties should be very general in nature to allow maximum flexibility for home rule counties.

Providing home rule for counties was described as more complex than for cities because counties have state-oriented functions and certain county functions must be uniform statewide. Criminal laws, county courts, and recording of deeds were cited as examples of areas in which counties must function uniformly.

The greatest problem of county government was said to be administrative organization and the political constraints on reorganizing county government were described as such that flexibility could be allowed under state law because any change would require voters' consent. It was recommended that home rule counties should have complete authority to determine the form of government and which elected and appointed offices will be filled within county government. It was recommended that state law not limit county taxing authority because the political constraints imposed by voters would sufficiently limit county taxing authority. The committee was advised that the number of signatures required on a petition to put the home rule question on the ballot should be low enough to allow ample opportunity for the voters to consider the question. Allowing home rule counties to exercise ordinance powers was recommended because county government presently acts through resolutions and residents of home rule counties should have a greater opportunity to participate in local decision-making through the ordinance process and should be made aware of local laws by published ordinances. As an adjunct to ordinance power, it was recommended that counties should have power, not superseding the state's criminal laws, to impose penalties for violations of ordinances.

Recommendations of the Association of Counties

Representatives of the North Dakota Association of Counties pointed out that counties view county home rule as primarily a management and finance tool. The association went on record as supporting the home rule study. The association indicated it was comfortable with using city home rule experience as a basis for county home rule.

The association suggested the following areas in which county home rule provisions should differ from state law providing for city home rule. The number of signatures required to put the county home rule question on the ballot should be lower than the number required for city home rule petitions. There should be at least one public hearing on a home rule charter before the charter is submitted to the board of county commissioners. The requirement in state law providing for city home rule that the charter be put on the ballot within six months of submission to the governing body should not be included in state law providing for county home rule so a special election would not be needed to approve a county home rule charter and the charter question could appear on either the primary or general election ballot. State law should allow maximum flexibility for taxation by county government. State law should require any county home rule charter to include a statement indicating which county offices would be eliminated or combined by approval of the charter.

Recommendations

The committee makes no recommendations regarding transfer of powers or functions between political subdivisions or elimination or combination of county offices. The committee received no testimony indicating that changes are desired in either area.

The committee makes no recommendation to provide for optional forms of county government outside of the county home rule recommendation. Present law allows for county manager and county consolidated office forms of government, neither of which is being utilized by any county in the state. The committee received no recommendation for changes in these forms of government or creation of additional alternative forms of government, other than recommendations that county home rule be allowed.

The committee recommends House Bill No. 1083 to provide for county home rule patterned after existing city home rule provisions. The provisions of the bill differ from state law which provides for city home rule in several respects. Those differences are discussed in the following paragraphs. For purposes of this discussion, only areas of difference between the bill and state law providing for city home rule are discussed. In addition, if no comparable provision exists in state law providing for city home rule, only the provisions of House Bill No. 1083 are discussed.

House Bill No. 1083 provides that the number of signatures required to initiate a county home rule proposal is two percent of the population of the county while 15 percent of the electors of the city voting in the last city election are required to sign a petition for initiation of city home rule charters. The board of county commissioners must appoint a charter commission to draft a home rule charter within 60 days after proceedings have been initiated for a home rule charter. The charter commission must hold at least one public hearing on the proposed charter before submitting it to the board of county commissioners. The charter submitted must contain a list of county offices that will be elected offices and a list of any elected offices that will be eliminated or combined if the charter is adopted. The proposed county home rule charter may be submitted to a vote at only a primary or general election. A special election may be called on the question of approval of a city home rule charter.

House Bill No. 1083 provides that the home rule charter and ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city. The bill provides that the county may adopt, repeal, initiate, refer, enforce, and provide penalties for violations of ordinances, resolutions, and regulations. All cities, but not counties, have these powers under present state law. The bill provides, as for city home rule, that county home rule provisions do not supersede provisions of state law which define crimes or provide criminal penalties.

House Bill No. 1083 provides that counties have power to levy any taxes. The provisions providing for city home rule taxing authority have been interpreted to mean that cities may levy property taxes and any

other taxes for which specific power is granted by state law. No limitations are imposed by the bill on the authority of home rule counties to levy taxes of any kind. The committee determined that political constraints of voter approval of a charter will limit the taxing authority of county government under home rule.

House Bill No. 1083 provides that home rule counties may provide for county elected and appointed officers and employees; their selection, powers, duties, qualifications, and compensation; and the terms of county appointed officers and employees. The terms of elected officers of counties are set by the constitution at four years so it is not possible to give counties power by statute to vary the constitutionally set terms of elected officers. The power to provide for county elected and appointed officers and employees includes all powers necessary to change the structure of county government under home rule. In Litten v. City of Fargo, 294 N.W.2d 628 (1980), the North Dakota Supreme Court determined that the power of home rule cities under NDCC Section 40-05.1-06 to provide for city officers refers only to individual officers and not the structure of city government because of definitions appearing in Section 40-01-01. As similar definitions do not apply in Title 11, the bill specifies that the county may provide for elected and appointed officers and their powers and duties, and the committee recommends that counties have the full right to determine the structure of county government in any manner which the citizens approve.

The provisions on city home rule allow cities to provide for city courts and their jurisdiction. No similar provision is contained in House Bill No. 1083 for county home rule. Under the unified judicial system, county courts are governed by a well-delineated body of state law, and the committee determined that county courts, whether or not in home rule counties, should continue to function uniformly, governed exclusively by state law.

RETIREMENT COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-02.3, enacted by the 1977 Legislative Assembly, provides for the biennial appointment by the Legislative Council of a Committee on Public Employees Retirement Programs. Section 54-35-02.4 provides:

1. The committee on public employees retirement programs shall consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision. The committee shall make a thorough review of any measure or proposal which it takes under its jurisdiction, including an actuarial review. The committee shall report its findings and recommendations, along with any necessary legislation, to the legislative council and to the legislative assembly.
2. To carry out its responsibilities, the committee, or its designee, is authorized to:
   a. Enter into contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation.
   b. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time request.
   c. Establish rules for its operation, including the submission and review of proposals and the establishing of standards for actuarial review.
3. The committee may solicit draft measures and proposals from interested persons during the interim between legislative sessions, and may also study measures and proposals referred to it by the legislative assembly or the legislative council
4. A copy of the committee's report concerning any legislative measure shall, if that measure is introduced for consideration by a legislative assembly, be appended to the copy of that measure which is referred to a standing committee.
5. A legislative measure affecting a public employees retirement program shall not be introduced in either house unless it is accompanied by a report from the committee. A majority of the members of the committee, acting through the chairman, shall have sole authority to determine whether any legislative measure affects a public employees retirement program.
6. Any amendment made during a legislative session to a legislative measure affecting a public employees retirement program shall not be considered by a standing committee unless it is accompanied by a report from the committee on public employees retirement programs.
7. Any legislation enacted in contravention of the provisions of this section shall be invalid and of no force and effect, and any benefits provided under such legislation shall be reduced to the level current prior to enactment.

In addition to its statutory responsibilities, the committee received permission from the chairman of the Legislative Council to expand its interim responsibilities to include House Concurrent Resolution No. 3040, which directed a study of the desirability and feasibility of the recodification of the Teachers' Fund for Retirement statutes, and House Concurrent Resolution No. 3057, which directed a study of the Highway Patrolmen's Retirement System. The chairman of the Legislative Council also approved the preparation and completion of a survey of public employee retirement programs outside the scope of the Public Employees Retirement System and the Teachers' Fund for Retirement provided by political subdivisions. The purpose of the survey was to discover the existence of any potential funding or other problems that might exist in these plans.

Committee members were Representatives Robert W. Martinson (Chairman), Rosie Black, Walter R. Hjelle, and Irven Jacobson; and Senators Jim Kusler, Bonnie Miller Heinrich, and Curtis N. Peterson.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

TEACHERS' FUND FOR RETIREMENT RECODIFICATION STUDY

House Concurrent Resolution No. 3040 directed a study of the feasibility and desirability of recodifying the statutes affecting teacher retirement programs. The purpose of the recodification was to simplify the existing laws. The Teachers' Fund for Retirement statutes are found in NDCC Chapters 15-39, 15-39.1, and 15-39.2. Testimony received by the committee indicated that the board of trustees for the Teachers' Fund for Retirement was planning to conduct its own recodification using its own financial resources. Testimony also indicated that the existing teachers' retirement laws are very complex and have become subject to many Attorney General's opinions over the years.

The committee decided to follow the activities of the board of trustees for the Teachers' Fund for Retirement with regard to its recodification efforts and to provide assistance and information as necessary. The recodification effort of the Teachers' Fund for Retirement was not completed during the interim and, as a result, the committee decided not to pursue the subject any further.

HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

House Concurrent Resolution No. 3057 directed a study of the Highway Patrolmen's Retirement System (NDCC Chapter 39-03.1), to include a review of the funding mechanism of the system, the benefit limitations of the system, Social Security eligibility under the system, and coverage of the system, with emphasis on the feasibility and desirability of expanding the system to cover other law enforcement personnel and members of the Highway Patrol transferred from the Truck Regulatory Division.

Background

Under Chapter 39-03.1, members of the Highway Patrolmen's Retirement System contribute seven percent of their monthly salary, up to $133 per month.

The state is required to contribute 12 percent of monthly salary, up to $228 per month. Normal retirement benefits consist of 2.5 percent times final average salary (not to exceed $1,900 per month), times years of service up to 25 years, plus 1.5 percent times final average salary times year of service over 25 years. Normal retirement for members of the system is 55 years of age with 25 years of service. Members of the Highway Patrolmen's Retirement System do not participate in the federal Social Security program. There is no disability benefit provision under the Highway Patrolmen's Retirement System.

Highway Patrolmen's Retirement System Funding Status

A similar study of the Highway Patrolmen's Retirement System was conducted by the 1981-82 interim Committee on Public Employees Retirement Programs. An actuarial valuation of that system completed for the committee in 1981 indicated a shortfall existed in contributions necessary to pay the system's unfunded liabilities equal to 7.2 percent of covered payroll assuming a 21-year amortization schedule for the payment of the unfunded liability. The funding shortfall was 3.6 percent assuming a 40-year amortization schedule. The 1981-82 interim committee recommended House Bill No. 1067 to increase the state's contribution by 3.6 percent and adopt a 40-year amortization schedule. The bill was not enacted by the 1983 Legislative Assembly.

The committee received information that the 1984 actuarial valuation of the Highway Patrolmen's Retirement System indicated a continuing shortfall in the funding of the system. The 1984 actuarial valuation shows the Highway Patrolmen's Retirement System is currently experiencing a seven percent shortfall in necessary contributions assuming an 18-year amortization schedule for the unfunded liability and a 3.7 percent shortfall assuming a 40-year amortization schedule. A seven percent increase in contributions necessary to eliminate the funding shortfall equates to an annual dollar cost of $160,500.

Committee Considerations

The committee examined a bill draft submitted by the Public Employees Retirement System (PERS) to repeal the Highway Patrolmen's Retirement System and to bring the highway patrolmen under PERS. The bill draft would have provided the highway patrolmen with a benefit multiplier equal to 1.30 percent and normal retirement date of age 55. The bill draft would have had no salary cap on contribution or benefit levels as currently existing under the Highway Patrolmen's Retirement System and would have required all highway patrolmen to participate in the federal Social Security system. As PERS members, these highway patrolmen would be covered by the disability benefit provisions under PERS and the mandatory retirement at age 60 provision in the Highway Patrolmen's Retirement System laws would have been carried over into the new law.

According to the actuarial review of the bill draft, it would have reduced the actuarial cost of the current Highway Patrolmen's Retirement System from approximately 27.5 percent of covered compensation to 17.0 percent of covered compensation. In addition, the state and the patrolmen would have been required to contribute to the federal Social Security system.

Members of the Highway Patrolmen's Retirement System opposed the bill draft to bring them under PERS at a separate level of benefits and retirement age because, if a highway patrolman retired at age 55 under PERS, the patrolman would not yet be eligible for federal Social Security benefits. Testimony indicated the highway patrolmen favored retaining their present retirement program because they believed by becoming members of PERS, benefits would be lost.

The committee received information that legal questions exist whether the bill draft submitted by PERS adequately protects the rights of vested members and retirees of the Highway Patrolmen's Retirement System. The legal question is whether patrolmen who have met the minimum requirements of age and length of service are entitled, contractually or otherwise, to benefits in existence at the time the entitlement became vested, and whether these vested rights may be altered by the state without an impairment of contracts or due process claim by the members affected.

The committee also reviewed proposals submitted by the members of the Highway Patrolmen's Retirement System to bring into the Highway Patrolmen's Retirement System the truck regulatory personnel who were transferred to the Highway Patrol by the 1983 Legislative Assembly but who remained members of PERS. The committee examined this proposal and consideration was given to bringing the truck regulatory personnel into the Highway Patrolmen's Retirement System but leaving them as participants in the federal Social Security system with a Social Security offset against benefits received under the Highway Patrolmen's Retirement System.

Because of unresolved problems concerning the handling of retirement service credit earned under PERS, including whether all of the former truck regulatory personnel should be transferred to the Highway Patrolmen's Retirement System or only those performing duties similar to that of other highway patrolmen, and whether the former truck regulatory personnel were aware of and willing to accept the loss of their disability benefit under PERS, the proposal to bring the former truck regulatory personnel under the Highway Patrolmen's Retirement System was not pursued by the committee.

The committee also received testimony from the members of the Highway Patrolmen's Retirement System indicating the members of that system would be willing to contribute additional moneys if the maximum salary provisions on contributions and benefits under that system are raised or eliminated.

Recommendations

The committee recommends House Bill No. 1084 to increase the state contribution to the Highway Patrolmen's Retirement System by seven percent to correct the underfunding situation in that retirement program, assuming an amortization schedule of 18 years. The annual dollar cost of this bill is estimated to be $160,500.

As an alternative to House Bill No. 1084, the committee recommends House Bill No. 1085 to eliminate the maximum salary provisions in the Highway Patrolmen's Retirement System and to correct the underfunding situation in that retirement program. The bill has an estimated cost of nine percent of covered salary which equals an annual dollar cost of approximately $206,000. The cost is allocated between the state and the patrolmen with the state paying 5.7

percent of the nine percent and the patrolmen paying the remaining 3.3 percent. The committee recommends House Bill No. 1085 because it reestablishes the actuarial soundness of the Highway Patrolmen's Retirement System and provides a benefit enhancement to the members of that system at the total cost to the state lower than the cost of House Bill No. 1084.

The committee makes no recommendation with regard to bringing other law enforcement officers or the former truck regulatory personnel under the Highway Patrolmen's Retirement System because of unresolved technical problems in making that transfer and because of the loss of disability benefits for former truck regulatory personnel if the transfer is made.

The committee makes no recommendation with regard to the PERS proposal to repeal the Highway Patrolmen's Retirement laws and having the highway patrolmen become members of PERS. The committee makes no recommendation because of opposition to the proposal by highway patrolmen and because of some committee consideration given to the idea that there should be a future interim study on the desirability and feasibility of developing a state retirement plan for law enforcement officers.

PERIPHERAL RETIREMENT PROGRAMS SURVEY

The committee directed the completion of a survey of a statutorily authorized public employee retirement programs that are outside the scope of the state programs such as the Public Employees Retirement System and the Teachers' Fund for Retirement.

The purpose of the survey was to develop needed information concerning the existence and status of local government level retirement programs for their public employees. The committee intends to use the information gained from the survey to help make policy decisions with regard to the issues and concerns that may exist in the area of public employees retirement.

The survey questionnaires were directed to those political subdivisions with statutory authority to implement retirement programs for their public employees. The survey questionnaires were sent to counties, school districts, and cities.

Each survey contained questions in the following subject areas:

1. The existence and description of any public employee retirement programs provided.
2. If a retirement plan is provided, whether participation is mandatory or voluntary and, if voluntary, the number of persons eligible to participate and the number of persons who actually participate.
3. If a retirement plan is provided, a request was made for the most recent actuarial valuation, if any, of the plan.
4. Whether the Public Employees Retirement System has been or is being considered as a vehicle to provide a retirement program for these public employees.

County Survey Results

Of the 53 counties in this state, 34 provide a retirement benefit program for their public employees through PERS. Of the remaining 19 counties, six provide some form of retirement benefit for their public employees and 13 provide no retirement benefit. Eight of the 19 counties not participating in PERS had at some time considered PERS as a vehicle for a retirement program for their public employees.

School District Survey Results

There are 318 school districts in the state. Twenty-nine of these are nonoperating. Thirty of the operating school districts provide a retirement benefit for their noncertified employees such as clerks and janitors through PERS. Two hundred fifty-eight of the school districts not participating in PERS were surveyed. Two hundred sixteen responses were received to the survey. Only two of these school districts provided a retirement benefit for their noncertified employees. Thirteen of these school districts indicated that PERS had been considered for providing a retirement benefit for their employees.

Municipal Survey Results

Of the 365 cities in the state, 21 provided a retirement benefit for their employees through PERS. The remaining 344 cities were surveyed. Two hundred nine responses were received to the survey. Twenty-five of the cities responding provided a retirement benefit for their public employees. Twenty of the cities responding indicated that PERS had been considered for providing a retirement benefit for their employees.

Recommendations

The committee makes no recommendations as a result of the information received from the county, school district, and city public employee retirement survey. The committee hopes to use the information obtained when considering future study issues such as mandating actuarial reporting and valuation standards for all public employee retirement programs and the consolidation of public employee retirement programs. The committee also hope to use the information gathered to help determine the actuarial funding status of these peripheral public employee retirement programs to help avoid funding problems that have been experienced in some states.

CONSIDERATION OF RETIREMENT PROPOSALS

The committee established April 1, 1984, as the deadline for submission of retirement proposals. The deadline was established to allow the committee and its actuaries sufficient time to evaluate the proposals. The committee also limited the submission of retirement proposals considered by it to legislators and those agencies entitled to the bill introduction privilege.

The committee reviewed each proposal submitted and solicited testimony from proponents, retirement program administrators, supreme and district court judges, and other interested persons. The committee utilized the actuarial services of the Martin E. Segal Company in evaluating the proposals submitted. The committee obtained written actuarial information on each of the proposals over which it took jurisdiction.

The committee refused to take jurisdiction over proposals which did not pertain specifically to public employees' retirement programs.

In evaluating each of the proposals, the committee considered the actuarial effect, number of people affected, method of funding, effect on the state's general fund, effect on the retirement program, and other consequences of the proposal or any alternatives to the proposal. Based upon these factors, each

proposal received either a favorable recommendation, an unfavorable recommendation, or no recommendation.

A copy of the actuarial valuation and the committee's report on the proposal will be appended to each proposal and delivered to the proponent. Each proponent is responsible for securing introduction of that proposal. A copy of the committee's report and the actuarial valuation must be appended to each proposal when it is introduced.

ALTERNATE FIREMEN'S RELIEF ASSOCIATION RETIREMENT

North Dakota Century Code Chapter 18-11 allows cities with paid fire departments to establish firemen's retirement programs as outlined in that chapter. Before a program becomes operative it must be approved by the firemen and the city government. The firemen are assessed an amount as set in the bylaws of the association, but it may not be less than five percent of the monthly salary of a first-class fireman for the first 30 years of employment. After 30 years, the assessment is as set in the bylaws, but it may not be less than 2.5 percent of the monthly salary of a first-class fireman. The city must levy a tax to support the association sufficient to contribute, at a minimum, eight percent of a first-class fireman's salary for each member of the association. Firemen's retirement plans established under Chapter 18-11 also receive state funding derived from the state fire insurance premium tax.

Service pensions are paid to members who have been employed for 20 years and who are at least 50 years of age. The service pension benefit at age 50 and 20 years of service is 40 percent of a first-class fireman's salary. The service pension benefit increases with each year of service and for each year of age by two percent up to a maximum of 60 percent at 60 years of age. If a member has worked for 20 years and is not 50 years of age, a deferred pension is available and payable at age 50. All pensions are computed on the salary paid to a first-class fireman as of the first day of the year in which the pension is paid. A disability pension is paid at the rate of 50 percent of a first-class fireman's salary unless the member is entitled to more under the service pension. The retirement plan provides for surviving spouse, surviving children, and dependent parents' benefits. A funeral benefit may be provided not to exceed twice the monthly salary of a first-class fireman.

A committee received information indicating that the Fargo Alternate Firemen's Relief Association is experiencing a serious underfunding situation. The 1984 actuarial valuation of that retirement plan showed that it is currently receiving total annual contributions from all sources equal to 18.95 percent of total salary, but that the actual required rate of contribution is 67.72 percent of total salary, leaving a 48.77 percent annual funding deficiency. The 48.77 percent funding deficiency equates to an annual cost of $961,922. The committee learned that the underfunding situation has been ongoing for a number of years and is primarily caused by the existence of a benefit cost-of-living adjustment in NDCC Chapter 18-11. Benefits are adjusted each year to reflect any change in a first-class fireman's salary. The benefits provided have, therefore, been increasing over the years despite the fact that the contribution level has remaind relatively stable.

The committee reviewed two bill drafts submitted by the Fargo Alternate Fireman's Relief Association addressing that program's funding problems. The first bill draft would have made substantial changes to Chapter 18-11, including the elimination of the cost-of-living adjustment provisions, the adoption of benefits based on a three-year final average salary, the reduction of pensions to surviving spouses and children of deceased members, the elimination of a funeral benefit, and the freezing of benefits of current retirees and survivors.

The Bismarck Alternate Firemen's Relief Association presented testimony that indicated that any proposed change in the firemen's retirement laws should not be applied to that fund because, in contrast with the Fargo firemen's plan, the Bismarck fund was in sound actuarial condition. The committee had the 1984 actuarial valuation of the Bismarck Alternate Firemen's Relief Association retirement plan reviewed by the committee's actuary. The committee's actuary indicated that the Bismarck Alternate Firemen's Relief Association's 1984 actuarial valuation did not take into account future liabilities that will be accruing when new personnel are added to the fire department. Testimony indicated that the Bismarck Alternate Firemen's Relief Association retirement plan may be experiencing an underfunding situation and that a new valuation would have to be conducted using more conventional and accepted actuarial methods to specify the degree of any financial problems.

Testimony from the Bismarck Alternate Firemen's Relief Association actuary indicated a belief that that fund is in reasonably good shape but that, if alternative actuarial valuation methods had been used, additional contributions would have been recommended. Testimony from the Bismarck firemen's actuary also indicated that the actuarial valuation method used in the 1984 valuation did not provide the members of the Bismarck Alternate Firemen's Relief Association with sufficient information to conclude whether their plan is financially sound.

The Fargo Alternate Firemen's Relief Association submitted for the committee's consideration an alternative bill draft to allow the board of trustees of a firemen's relief association to reduce benefits in accordance with actuarial recommendations to ensure the financial solvency of those problems. The bill draft would allow flexibility for the Fargo Alternate Firemen's Relief Association to try and solve its funding problems and at the same time would provide flexibility to the Bismarck Alternate Firemen's Relief Association without making amendments to the existing laws which may negatively affect benefits paid under the Bismarck fund.

The committee also received information indicating that both bill drafts affecting the firemen's relief association statutes considered by the committee raised legal questions concerning the possible infringement of rights of vested members of those retirement plans and that reduction or freezing of benefits under these retirement plans could, arguably, only be made if the interests of the state or political subdivision in correcting problems in those funds is sufficient to outweigh the pension rights of the vested members.

Firemen's Retirement Recommendations

The committee recommends House Bill No. 1086 to amend NDCC Section 18-11-18 to allow the board of trustees of alternate firemen's relief associations the

authority to reduce benefits under that chapter in accordance with actuarial recommendations to ensure the solvency of those funds. The reductions are subject to the condition that the benefits paid to existing retirees and pension recipients must not be less than that paid in the previous calendar year. The reductions must be based on actuarial recommendations taking into consideration the pension benefit standards for similarly funded plans and the benefits may be restored only after actuarial study and recommendation approved by the board of trustees. The committee recommends the bill as a stopgap measure to prevent further accumulation of liabilities under these retirement programs and to allow flexibility to these programs to address their funding problems.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

North Dakota Century Code Chapter 54-52 established the Public Employees Reitrement System (PERS). Any person employed by the state, a district health unit, or the Garrison Diversion Conservancy District, is covered by this system. Persons covered under the Teachers' Fund for Retirement, the Highway Patrolmen's Retirement System, the Judicial Retirement System, or other retirement plans to which the state is contributing are not members of PERS. Elected officials and officials appointed prior to July 1, 1979, can choose to be members. Officials appointed to office for the first time after July 1, 1979, are required to be members. Supreme and district court judges, except for those covered under the Judicial Retirement System, are also participating members. A county, city, or school district may choose to participate upon entering into an agreement with PERS and upon approval of a majority of the employees.

The PERS plan provides a benefit of 1.20 percent of final average salary times the number of years of service. The final average salary equals the average of the highest salary for any 60 consecutive months of the last 120 months of employment. The benefit is payable at age 65 and a reduced early retirement benefit is payable at age 55 after 10 years of service. No member may receive credit for more than 15 years of service unless the member has contributed to the plan, established on July 1, 1966, in excess of 35 years. After retirement, benefits are adjusted as deemed necessary by the Legislative Assembly. A member who becomes disabled receives a disability benefit equal to 60 percent of final average salary reduced by Social Security disability benefits and by workmen's compensation. Disability is determined by Social Security disability standards.

The following is a summary of the proposals and committee action relating to PERS over which the committee took jurisdiction:

Bill No. 1. **Sponsor:** Representative Charles F. Mertens
Proposal: Reduce disability benefits by 50 percent of the member's primary Social Security benefit rather than 100 percent.
Actuarial Analysis: The annual actuarial cost impact on PERS would be approximately $1,076,000 or .60 percent of June 30, 1983, compensation.
Committee Report: Unfavorable recommendation because the existing benefit is in line with disability benefits provided by other states and because the change would make a disability benefit more attractive than a retirement benefit.

Bill No. 2. **Sponsor:** Representative Charles F. Mertens
Proposal: Allow normal retirement when a member has a total of years of age plus years of service equal to 90 with a minimum retirement age of 60.
Actuarial Analysis: The annual actuarial cost impact on PERS would be approximately $1,445,000 or .85 percent of June 30, 1983, compensation.
Committee Report: Favorable recommendation because it provides a benefit enhancement with a reasonably low cost.

Bill No. 3. **Sponsor:** Representative Charles F. Mertens
Proposal: Eliminate the 35-year maximum allowable years of service credit.
Actuarial Analysis: The annual actuarial cost impact on PERS would be approximately $191,000 or 0.11 percent of June 30, 1983, compensation.
Committee Report: Unfavorable recommendation because the committee favors PERS Bill No. 4 which has similar provisions but makes an additional amendment suggested by PERS.

Bill No. 4. **Sponsor:** Public Employees Retirement System
Proposal: Eliminate the 35-year maximum allowable years of service credit and ensure that members who are receiving an early retirement benefit may not accrue additional credit after their early retirement date.
Actuarial Analysis: The annual actuarial cost impact on PERS is the same as in PERS Bill No. 3.
Committee Report: Favorable recommendation because it provides a benefit enhancement at a reasonable cost and makes needed technical amendments.

Bill No. 5. **Sponsor:** Representative Charles F. Mertens
Proposal: Calculate the retirement benefits based on a three-year final average salary rather than the existing five-year final average salary.
Actuarial Analysis: The annual actuarial cost impact on PERS would be approximately $1,037,300, or 0.58 percent of June 30, 1983, compensation.
Committee Report: Favorable recommendation because it provides a benefit enhancement at a reasonable cost to the system.

Bill No. 6. **Sponsor:** Public Employees Retirement System
Proposal: Provide for the calculation of benefits based on a three-year final average salary rather than the existing five-year final average salary and provide that calculation of benefits should include part-time employment for which credit has been given.
Actuarial Analysis: The annual actuarial cost impact to PERS is the same as in PERS Bill No. 5.
Committee Report: No recommendation

because of testimony expressing problems with the use of part-time employment in the calculation of final average salary.

Bill No. 7. **Sponsor:** Public Employees Retirement System
Proposal: Increase the benefit multiplier to 1.30 percent.
Actuarial Analysis: The annual actuarial cost impact on PERS would be $1,334,300, or 0.74 percent of June 30, 1983, compensation.
Committee Report: Favorable recommendation because it provides a benefit enhancement at a reasonable cost to the system.

Bill No. 8. **Sponsor:** Public Employees Retirement System
Proposal: Increase retirement benefits by three percent for each year of employment beyond normal retirement date.
Actuarial Analysis: The annual actuarial cost impact on PERS would be approximately $79,100, or .04 percent of June 30, 1983, compensation.
Committee Report: Unfavorable recommendation because the bill draft does not have a minimum service requirement and would permit someone who starts at age 60 and works until age 70 to get a postponed benefit. The committee does not recommend this bill draft also because, if Bill No. 2 is enacted, a person who enters eligible employment at age 20 would be eligible for normal retirement at age 55 and would also be eligible for a postponed benefit for each year worked after age 55.

Bill No. 9. **Sponsor:** Public Employees Retirement System
Proposal: Increase state contributions for supreme and district court judges under PERS to 18.5 percent.
Actuarial Analysis: This proposal would have a positive actuarial funding impact on the system.
Committee Report: Favorable recommendation to correct an error made when the judges' retirement provisions under PERS were enacted by the 1983 Legislative Assembly.

Bill No. 10. **Sponsor:** Public Employees Retirement System
Proposal: Allow a member to designate a beneficiary to receive the member's account balance if the member dies prior to retiring.
Actuarial Analysis: This proposal would not have an actuarial cost impact on the system.
Committee Report: Favorable recommendation because it provides a member the option to designate a beneficiary to receive the member's account balance other than the member's surviving spouse if the member dies prior to retiring.

Bill No. 11. **Sponsor:** Public Employees Retirement System
Proposal: Establish a separate level of retirement benefits for law enforcement officers who are participating in the Public Employees Retirement System at a separate contribution and assessment level, with a three-year final average salary, normal retirement age at age 55, postponed retirement at age 55, early retirement at age 50 after 10 years employment, and a benefit multiplier of 1.30 percent.
Actuarial Analysis: This proposal would have an annual actuarial cost of approximately one percent of the salary of those persons falling within the definition of "law enforcement officer."
Committee Report: Unfavorable recommendation because it is creating a separate level of benefits for a class of employees at a time when the committee is contemplating consolidation of retirement programs instead of expansion and because, PERS Bill No. 2, as outlined in this report, will mitigate the concerns of the law enforcement officers with regard to having a retirement age before age 65.

The retirement proposals affecting PERS receiving favorable recommendations would have, if enacted, a combined annual actuarial cost impact of $4,007,600, or 2.28 percent of June 30, 1983, covered compensation.

TEACHERS' FUND FOR RETIREMENT

North Dakota Century Code Chapter 15-39 established the Teachers' Insurance and Retirement Fund. This fund, the rights to which were preserved by NDCC Section 15-39.1-03, provides a fixed annuity for those full-time teachers whose rights vested in the fund prior to July 1, 1971. The teachers' insurance and retirement fund was repealed in 1971 when the Teachers' Fund for Retirement (TFFR) was established by the enactment of NDCC Chapter 15-39.1.

The TFFR plan provides a benefit of 1.05 percent of final average salary times the number of years of service. Final average salary equals the average of the teacher's highest monthly salary received for any three years employed during the last 10 years of membership in the fund. The benefit is payable if:

1. The teacher has completed 10 years of teaching credit and has attained the age of 65 years; or
2. The teacher has attained the age of 65 years and has completed the final year of teaching in 1971; or
3. The teacher has a combined total of years of service credit, of which one year must be completed after July 1, 1979, and years of age which equals 90.

A minimum benefit of $6 per month per year of teaching for the first 25 years of service and $7.50 per month of teaching credit over 25 years exists for full-time teachers who retired in or after 1971. After retirement, benefits are adjusted as deemed necessary by the Legislative Assembly. A reduced early retirement benefit is payable at age 55 after 10 years of service. A teacher who becomes disabled receives a disability benefit equal to the retirement benefit credits the teacher has earned to the date of disablement. Disability is determined by the board of trustees of the fund after examination of the teacher by two physicians appointed by the board. The following is a summary of the proposals and commit-

tee action relating to TFFR over which the committee took jurisdiction:

Bill No. 1. **Sponsor:** Senator Curtis Peterson
Proposal: Provide a postretirement adjustment for retired teachers equal to one percent for each year the teacher has been retired under the fund. No teacher may receive more than 10 percent or more than a $40 per month increase in benefits.
Actuarial Analysis: The annual actuarial cost impact on TFFR would be approximately $394,000 or 0.20 percent of 1984 projected payroll.
Committee Report: No recommendation because the provisions of this bill were incorporated in TFFR Bill No. 5.

Bill No. 2. **Sponsor:** Senator Bonnie Miller Heinrich
Proposal: Allow full-time teachers to negotiate an agreement with their employee to reduce full-time employment and receive a partial retirement benefit from the fund.
Actuarial Analysis: The annual actuarial cost impact on TFFR would be $96,000 or 0.05 percent of 1984 projected payroll.
Committee Report: Favorable recommendation because it allows teachers who are reaching the end of their service careers to reduce their workload and receive a partial retirement benefit and allows the employers of teachers to practice phased-in retirement plans.

Bill No. 3. **Sponsors:** Representatives Kenneth Knudson and Serenus Hoffner
Proposal: Allow a beneficiary of a teacher to purchase, within one year after the effective date of the Act, additional military service credit of the teacher whether or not the teacher was eligible to purchase the credit prior to the teacher's death.
Actuarial Analysis: The number of beneficiaries wou would exercise this option is unknown. However, the actuarial cost impact to the fund could be considerable assuming all eligible beneficiaries purchase the additional credit.
Committee Report: Unfavorable recommendation because it allows a beneficiary to exercise an option a member did not have during active participation in the fund. The proposal would result in the opening of a temporary window to benefit individuals retroactively; this may appear inequitable to other plan participants.

Bill No. 4. **Sponsor:** Teachers' Fund for Retirement
Proposal: Provide for the reversion to the fund of unclaimed member assessments 36 months after the member becomes eligible for retirement benefits or refund of assessements under the fund, whichever is later. Members may claim their assessments after they have reverted to the fund upon proper proof of entitlement.
Actuarial Analysis: This proposal would have no actuarial cost impact on the fund.
Committee Report: Favorable recommendation because it allows TFFR to utilize unclaimed moneys for the benefit of the system as a whole without jeopardizing the rights of members.

Bill No. 5. **Sponsor:** Teachers' Fund for Retirement
Proposal: Increase the benefit multiplier under the fund to an undetermined amount dependent on the actuarial reserve margins available after the completion of the 1984 actuarial valuation of the fund; provide a postretirement adjustment for retired teachers equal to one percent for each year the teacher has been retired under the fund with the increase being no more than 10 percent or more than a $40 per month increase in benefits; clarify final average salary under the fund to mean 1/36 of the total of the member's highest annual salary earned between July 1 of a calendar year and June 30 of a subsequent calendar year for any three of the last 10 years of service under the fund.
Actuarial Analysis: The annual actuarial cost to increase the benefit multiplier to various levels would be as follows:

Increase Multiplier From 1.05 Percent to:	Annual Cost	Percentage of Payroll
1.10 percent	$1,170,658	.61
1.15 percent	2,341,180	1.22
1.20 percent	3,511,770	1.83
1.25 percent	4,701,550	2.45

The annual actuarial cost to increase pensioners' benefits would equal $394,000 or 0.20 percent of 1984 projected payroll.
Committee Report: Favorable recommendation because it provides benefit enhancements subject to the availability of actuarial margins to fund the costs of benefit changes.

Bill No. 6. **Sponsor:** Teachers' Fund for Retirement
Proposal: Define "beneficiary" as the person designated in writing by the member or, in the absence of such designation, the member's surviving spouse, if any; define "salary" to mean a member's earnings in eligible employment under the chapter for teaching, supervisory, and administrative services during a school year as reported on the member's federal income tax withholding statements plus the value of any fringe benefits selected at the member's option in lieu of monetary remuneration ("salary" does not include fringe benefits such as payments for unused sick leave or vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, or medical insurance premiums paid by the employer in addition to salary); define "contract" to mean a written agreement with any school board or other governing body of any school district or letter of appointment by a state institution, state department, or other employer covered by the fund; allow the board of trustees to adopt benefit options by rule; provide for automatic refund of the accumulated assessments of a member who ceases eligibility in the

fund with less than 10 years of service; increase to $250 the penalty for failure to make required reports and payments to the fund.

Actuarial Analysis: This proposal would have no actuarial cost impact on the fund.

Committee Report: Favorable recommendation because it makes necessary technical changes concerning the operation of the fund.

The combined annual actuarial cost impact of TFFR proposals receiving favorable recommendations is dependent on the benefit multiplier chosen under TFFR Bill No. 5. The combined annual actuarial cost impact on TFFR could, therefore, range between $1,660,658 or 0.68 percent of 1984 projected payroll and $5,191,550 or 2.70 percent of 1984 projected payroll.

PROPOSALS AFFECTING MULTIPLE RETIREMENT PROGRAMS

Bill No. 1. **Sponsor:** Representative Rosie Black

Proposal: Allow PERS, TFFR, and Highway Patrolmen's Retirement System members who are legislators to purchase retirement credit for time lost while serving in the Legislative Assembly.

Actuarial Analysis: Data is unavailable for actuarial calculation purposes. However, it is expected the actuarial cost impact to be minimal for these retirement systems.

Committee Report: Favorable recommendation to allow the members of the systems to avoid loss of retirement credit because of public service in the Legislative Assembly.

Bill No. 2. **Sponsor:** Representative Michael Unhjem

Proposal: Allow a PERS, TFFR, or Highway Patrolmen's Retirement System member to withdraw the member's assessments and interest with a resulting forfeiture to those systems of all years of service credit earned prior to the date of the exercise of that option.

Actuarial Analysis: This proposal would have no actuarial cost impact on the systems.

Committee Report: Unfavorable recommendation because the proposal is contrary to the purpose of a retirement system to ensure the availability of financial resources to members after retirement.

Bill No. 3. **Sponsor:** Representative Michael Unhjem

Proposal: Allow a PERS, TFFR, or Highway Patrolmen's Retirement System member to borrow against accumulated assessments at a rate two percentage points above the actuarial assumed rate of return on investments of fund moneys.

Actuarial Analysis: The proposal would have no actuarial cost impact on the funds involved.

Committee Report: Unfavorable recommendation because, although there is no actuarial cost impact on the fund, the actual investment return on fund moneys could be lessened by this proposal and because this type of program is more appropriate to defined contribution retirement plans rather than the defined benefit plans of these systems.

Bill No. 4. **Sponsor:** Representative Charles F. Mertens

Proposal: Provide for the payment of the state's uniform group insurance health premiums for retired members of PERS and TFFR using those systems' funds.

Actuarial Analysis: The initial cost of this bill would be approximately $1.5 million for PERS and $3 million for TFFR for a total annual cost of $4.5 million. This cost would increase each year due to the probability of the continuation of increased medical care costs and the anticipated number of retirees who will be added to the rolls in future years.

Committee Report: Unfavorable recommendation because of the substantial cost of the proposal and because the committee believes a more appropriate solution to medical insurance problems for retirees might be the establishment of a prefunded retirement health care plan.

Bill No. 5. **Sponsors:** Teachers' Fund for Retirement and Public Employees Retirement System.

Proposal: Provide that eligibility for retirement benefits paid to public employees who have service credit in TFFR, PERS, or the Highway Patrolmen's Retirement System is determined by adding the service credit earned in these funds and by calculating the actual benefit for these public employees using the certified salaries of the plan of last membership; provide that when an employee has employment where membership in both TFFR and PERS is required, the employee is a member of that plan in which the most service credit has been earned.

Actuarial Analysis: This proposal would have a very minimal actuarial cost impact on the funds.

Committee Report: Favorable recommendation because it prevents the loss of earned retirement service credit when a member of one retirement fund ceases eligible employment and obtains new eligible employment under the other retirement system. The proposal also allows ease of administration where membership is required of a public employee in both TFFR and PERS at the same time.

Bill No. 6. **Sponsor:** Public Employees Retirement System

Proposal: Provide for the transfer of the administration of the Judicial Retirement System (NDCC Chapter 27-17) to the Public Employees Retirement System.

Actuarial Analysis: This proposal would have no actuarial cost impact on the system. However, if the system is to assume the responsibility for pension payments a lump sum appropriation would be required either in the total amount or once every two years to fund the benefits.

Committee Report: Favorable recommendation because it allows ease of adminis-

tration and payment of benefits under the closed judicial retirement system.

Bill No. 7. **Sponsor:** Teachers' Fund for Retirement

Proposal: Provide an election to employees of Bismarck Junior College and Lake Region Community College coming under the jurisdiction of the State Board of Higher Education to continue membership in TFFR in lieu of the state board's alternative retirement program (TIAA-CREF).

Actuarial Analysis: This proposal would have no actuarial cost impact on the fund.

Committee Report: Favorable recommendation because it allows teachers employed at these educational institutions to choose which retirement program would provide them with better benefits and to protect the vested rights of those teachers under the Teachers' Fund for Retirement who would otherwise lose benefits by a mandatory transfer to TIAA-CREF.

OLD-AGE AND SURVIVOR INSURANCE SYSTEM

The committee took jurisdiction over a bill draft affecting the Old-Age and Survivor Insurance System (OASIS) operated under Job Service North Dakota:

Sponsor: Job Service North Dakota

Proposal: Increase primary insurance benefits under the OASIS program by $30 effective July 1, 1985, and by $20 effective July 1, 1986.

Actuarial Analysis: It is estimated the gross biennial cost of this benefit improvement would be approximately $71,800 but this gross cost would be offset by actuarial assumption gains for a net cost of approximately $50,000.

Committee Report: Favorable recommendation to provide necessary postretirement benefit adjustments.

PROPOSED 1985-86 INTERIM RETIREMENT STUDIES

The committee recommends House Concurrent Resolution No. 3006 to direct the Legislative Council to study the desirability and feasibility of expanding the jurisdiction of the Public Employees Retirement Committee to cover all legislation affecting fringe benefits provided to public employees. The committee recommends this study because of the need to address whether public employee fringe benefits should be reviewed and coordinated and whether the Public Employees Retirement Committee is the appropriate entity for review and coordination of fringe benefit legislation.

The committee recommends House Concurrent Resolution No. 3007 to direct the Legislative Council to study the desirability and feasibility of consolidating the existing public employee retirement plans into a single state retirement system with consideration being given to the desirability and feasibility of consolidating the Public Employees Retirement System, the Teachers' Fund for Retirement, the Highway Patrolmen's Retirement System, public employee retirement systems of political subdivisions, firemen's retirement systems, and law enforcement retirement systems. The committee recommends the study resolution because of a need to address several issues, including whether different public employee classes should receive different levels of retirement or disability benefits, whether a consolidation of retirement systems would provide administrative cost savings and increased administrative efficiency, and whether a consolidation of systems would help prevent actuarial funding problems that have been experienced by some public employees retirement plans in the state.

The committee recommends House Concurrent Resolution No. 3008 to direct the Legislative Council to study the desirability and feasibility of imposing mandatory actuarial valuation and reporting standards for public employee retirement systems in the state. The committee recommends this study resolution because of a need to ensure that public employees, political subdivisions, and the state are receiving sufficient and adequate information to determine the soundness of public employee retirement programs and because of committee concerns that federal legislation will be enacted on this subject if state action is not taken.

The committee recommends House Concurrent Resolution No. 3009 to direct the Legislative Council to study the actuarial soundness of political subdivision retirement programs for public employees. The committee recommends this study resolution because of a need to discover whether political subdivision retirement programs for their public employees are in sound actuarial condition.

The committee recommends House Concurrent Resolution No. 3010 to direct the Legislative Council to study firemen's retirement, including a study of the actuarial funding status of existing firemen's retirement funds. The committee recommends this study resolution because of a need to continue the examination of the alternate firemen's relief association retirement plans in the state which are currently experiencing funding deficiencies.

The committee recommends House Concurrent Resolution No. 3011 to direct the Legislative Council to study the desirability and feasibility of establishing a prefunded retirement health care insurance plan for public employees under the state's uniform group insurance plan. The committee recommends this study resolution because of the need to address the postretirement health care financial burdens experienced by retired public employees.

TENNECO PLANT COMMITTEE

Legislative Council Chairman, Representative Roy Hausauer, created a special committee of the Legislative Council in August 1983 to meet with the Montana Coal Tax Oversight Subcommittee for a joint tour of the Great Plains coal gasificiation plant at Beulah, North Dakota, and to discuss the issues and problems concerning the proposed Tenneco coal gasification plant to be constructed in the Beach, North Dakota-Wibaux, Montana, vicinity.

Committee members initially selected were Representatives Jack Murphy (Chairman), Richard J. Backes, Roy Hausauer, and Earl Strinden; and Senators David E. Nething and Rolland W. Redlin.

Following the joint meeting with the Montana committee at Beulah, Chairman Hausauer established the special committee as a regular interim committee of the Legislative Council in February 1984 and appointed Representative Kenneth N. Thompson and Senator Rick Maixner as additional committee members to represent the North Dakota areas that would be affected by the Tenneco plant.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

BACKGROUND

The Tenneco Coal Gasification Company, a subsidiary of Tenneco, Inc., has proposed the construction of a large-scale coal gasification plant and coal mine facility to supply that plant near Beach, North Dakota, just across the border in Montana. The proposed coal gasification plant is designed to produce 280 million standard cubic feet per day of synthetic natural gas from coal, approximately twice the production capacity of the Great Plains gasification plant at Beulah, North Dakota. The Tenneco coal gasification project would require a supply of 13.5 million tons of coal annually and about 10,000 acre-feet of water annually. The plant is designed to produce 200 million standard cubic feet per day of synthetic natural gas from coal. The plant's life is projected to be at least 30 years, and the available lignite reserves in the area are well in excess of requirements for the life of the plant. The synthetic natural gas would probably be transported through a pipeline constructed to connect the plant with the Northern Border Pipeline in North Dakota or through a pipeline constructed from the plant to Joliet, Illinois.

During the construction phase of the plant it was estimated that the peak population could increase from the present 30,000 people to approximately 43,000 in a 100-mile corridor from Dickinson to Glendive, Montana, along Interstate 94. During the production phase of the project about 1,050 workers would be employed at the plant and 300 would be employed at the mine.

The preferred mining plan of Tenneco, if implemented, would result in no mining of North Dakota coal for the first 15 to 20 years of the project.

1981-82 Interim Study

An interim study of the proposed Tenneco plant was conducted during the 1981-82 interim under the direction of 1981 House Concurrent Resolution No. 3018. The 1981-82 Tenneco Plant Committee focused its efforts on the issue of how to ensure the availability of impact assistance to the areas in North Dakota which would be affected by the Tenneco plant.

Testimony received by the 1981-82 interim committee indicated that the Beach-Wibaux area would see major activity and the existing services and facilities would need to be improved and expanded to handle that growth. Existing services and facilities would be inadequate to handle the extra burdens placed upon it because of plant-related activities.

Testimony indicated that there would be a need for improved school facilities; additional school personnel and equipment; new water and sewer facilities for the communities; improvements to heavily traveled county roads and city streets; additional law enforcement personnel, equipment, and facilities; road and street maintenance equipment; improvements to community centers; and new park and recreational facilities and equipment.

The 1981-82 committee also received testimony indicating that the North Dakota Energy Development Impact Office would be unable to offer financial assistance to North Dakota political subdivisions impacted by the Tenneco project as long as Tenneco's preferred plans call for both the plant and the mine site to be located in Montana with no North Dakota coal being mined for the first 15 to 20 years of the plant's operation. The basis for the Energy Development Impact Office's position is that it would be inappropriate to use North Dakota dollars to mitigate the impact of the plant and to do so would result in the subsidization of Montana coal development.

The 1981-82 Tenneco Plant Committee urged a continuation of legislative study efforts by this state to seek a mutual agreement with Montana to address the issues and problems surrounding the proposed Tenneco project. Additional background information can be found in the Tenneco Plant Committee portion of the 1983 Report of the Legislative Council.

STUDY CONSIDERATIONS

Tenneco Plant Project Postponed

In August 1984, Tenneco, Inc., informed the committee of its decision to indefinitely postpone the planning and construction of the proposed Tenneco coal gasification plant near Beach, North Dakota. Testimony indicated that the postponement decision was made because of the static demand for natural gas, flat energy prices, and the company's perception that there was a lack of national dedication to energy independence. Tenneco closed its Glendive, Montana, office in September 1984 but is retaining its coal lease position in eastern Montana and western North Dakota. Tenneco also plans to continue efforts to secure and maintain water rights for the project. Testimony from Tenneco indicated that it may be five years before the Tenneco project is examined again by the company but that when the project planning is begun again an alternate plant and mine site in North Dakota will be considered.

Despite the postponement of the Tenneco plant project the Energy Development Impact Office proposed continuing the joint efforts of this state and Montana to develop a coal development impact aid program for the Beach, North Dakota, and Wibaux,

Montana, area. The Energy Development Impact Office favored continuing the study because it is uncerain when the project will be constructed and it is uncertain which side of the North Dakota-Montana border the plant or the coal mine will be located.

Great Plains Coal Gasification Plant

The committee received testimony indicating that Tenneco, Inc., is a 30 percent equity shareholder in the Great Plains coal gasification plant at Beulah, North Dakota, and that the specific timing for the Tenneco coal gasification project near Beach, North Dakota, will not be established until the economic viability of the Great Plains plant is established. The committee reviewed information and testimony concerning the price subsidy negotiations between the federal Synthetic Fuels Corporation and Great Plains Gasification Associates for the synthetic natural gas produced at the Great Plains project. Testimony indicated the Great Plains gasification plant will receive a maximum of $790 million of subsidies over a 10-year period from the federal Synthetic Fuels Corporation. The maximum subsidy during the first three years will be $10 per thousand cubic feet of synthetic natural gas and $7.50 per thousand cubic feet for the remaining seven years. Great Plains Gasification Associates expects to have full production at the plant within three years after startup.

Tenneco Plant Water Supply Problems

The Tenneco coal gasification plant plans call for the development of required water supplies by diverting water from the Yellowstone River to the gasification plant via an aqueduct. Tenneco has acquired a perfected water right for more than 80,000 acre-feet of Yellowstone River water; however, because the planned diversion would transfer Yellowstone River water outside that river's drainage basin, approval by the signatory states of the Yellowstone River Interstate Compact must be acquired. Article X of that compact provides that no water shall be diverted from the Yellowstone River basin without the unanimous consent of the signatory states — North Dakota, Wyoming, and Montana. The Montana Legislature refused in 1981 to consent to the transbasin transfer of Yellowstone River water.

Tenneco, through its subsidiary, Intake Water Company, challenged Article X of the Yellowstone River Compact in federal court in 1981 using the following three arguments:

1. Article X of the Yellowstone River Compact is an impermissible burden on interstate commerce in that it requires unanimous consent of three states before interbasin water transfer is allowed.
2. Article X of the Yellowstone River Compact is unconstitutional as a denial of the 14th Amendment right to equal protection. The equal protection claim arises because the right to divert Yellowstone River water out of the basin is conditional pending consent of Montana, Wyoming, and North Dakota, although interbasin diversion from other Montana rivers is not subject to the same constraint.
3. The Yellowstone River Compact does not apply to Intake Water Company's planned diversion. Intake claimed that the Yellowstone River at Dawson, Montana, is not part of the waterway regulated by the compact.

The federal district court, upon motion of the defendants, dismissed Tenneco's complaint in October 1983. The court rejected the commerce clause argument saying, because the compact was ratified by Congress, Article X must be interpreted as federal law, and therefore immune from commerce clause attacks. The court denied the equal protection claim reasoning that the guarantees of equal protection apply to people, not geographical areas. The court rejected Tenneco's claim that the Yellowstone River at Dawson, Montana, is not part of the waterway regulated by the compact as totally without foundation. The court's judgment and opinion was entered in October 25, 1983. Tenneco's petition for rehearing was denied.

Testimony from Tenneco indicates that an appeal may be taken from the adverse federal court decision. Because of the water supply development problems Tenneco indicated that it may examine the Southwest Pipeline Project as a long-term alternative for a water supply for the project but no formal request to examine the feasibility or desirability of that alternative has been submitted to the Water Commission. The Water Commission has indicated the existing plan design for the Southwest Pipeline Project does not include an industrial use for the Tenneco project. Tenneco informed the committee of its intention to maintain its water rights and to work toward the approved use of water from the Yellowstone River.

North Dakota-Montana Joint Impact Mitigation Plan

The committee examined four possible scenarios with regard to the timing of the development of the Tenneco project:

1. Tenneco could proceed according to its original plans and begin construction in 1990. This scenario provides six years in which to develop an impact mitigation plan and pass appropriate legislation. Since the ideal time to reach such an agreement is prior to the time the plant and mine locations are set, the six years becomes, more realistically, about three.
2. Tenneco could push its schedule back even further. Testimony indicated that even if the schedule is pushed back, an impact mitigation plan should be in place for the time when it is needed.
3. For various economic reasons, Tenneco could decide to abandon its project. Testimony indicated that, if the project is abandoned and the mitigation plan has previously been put in place, neither state will suffer any great loss in preparing the plan, and the plan could serve as a template for any other interstate problems that might arise.
4. Tenneco could decide to advance its schedule. Testimony received by the committee indicated that, given the right combination of economic conditions and domestic and international political events, Tenneco might decide the time is at hand to go forward with its project. If an interstate plan is not in place prior to such a happening, the two states may not have the time to work out the necessary details.

The committee examined the following alternatives for a Tenneco plant impact mitigation plan for the Beach-Wibaux area:

1. The Legislative Assembly could specifically instruct the Energy Development Impact Office to mitigate the impacts associated with the

Tenneco plant even if the mine and the facility are both located in Montana. The Energy Development Impact Office testified against this proposal because, while procedurally this would be the easiest alternative, philosophically, it would be the most troublesome since it would subsidize the mitigation of impacts from Montana activity with revenue from North Dakota coal production.

2. Convince Tenneco to make an upfront contribution of funds to be used for impact mitigation on the North Dakota side of the border. Under Tenneco's current plans, mining in North Dakota would not start for some 20 years after mining begins in Montana. Contributions by Tenneco of sufficient magnitude would help meet the impact needs in Golden Valley and surrounding counties.
3. Provide for the prepayment of Tenneco of property taxes associated with any office structures in North Dakota and any coal severance taxes in an amount sufficient to meet impact aid requirements. Prepayment on coal severance taxes in North Dakota would require legislation permitting that option. Testimony indicated that such legislation would have to deal with questions of interest accruing on these payments. If severance taxes are not collected for 20 years or more, the interest accumulating on the prepayment could become prohibitive to the state at the time North Dakota mining begins.
4. Convince Tenneco to agree to mine on both sides of the state border simultaneously. Testimony from the Energy Development Impact Office indicated that if North Dakota can be assured that Tenneco will mine in the state at the time the plant goes into operation and if the state can be assured that the duration of that North Dakota mining and the number of tons severed in North Dakota will generate several million dollars of coal severance tax revenue before Tenneco's mining operation would move in its entirety to Montana, then energy impact funding could proceed just as it has elsewhere in the state.
5. Tenneco could locate the plant in North Dakota. If the plant were located in North Dakota, then the state would be assured of revenue from the coal conversion tax.
6. Montana and North Dakota could agree to share coal severance tax revenues. Possibilities considered by the committee under this option include:
   a. Payment by the state of Montana to the state of North Dakota of an amount sufficient to cover impact costs in North Dakota.
   b. Allocation of Montana coal severance tax collections from the Tenneco mining operation on the basis of the ratio of Tenneco's reserves in North Dakota to Tenneco's total reserves in the Wibaux-Beach area (roughly 70 percent to Montana and 30 percent to North Dakota).
   c. Allocation of Montana severance tax collections from the Tenneco mining operation on the basis of the ratio of Tenneco's workforce residing in North Dakota to the total Tenneco workforce.

The Energy Development Impact Office testified in favor of some sort of interstate agreement under the sixth alternative.

Tenneco Plant Impact Assistance Interstate Compact

The committee focused its efforts on a proposal to establish an interstate compact between North Dakota and Montana to provide energy development impact assistance to the Beach-Wibaux area regardless of where the plant and mine are sited.

The committee directed the drafting of an interstate compact containing the following major provisions:

1. The party states are North Dakota and Montana.
2. A special Tenneco plant impact assistance commission is created consisting of seven members — the director of the Energy Development Impact Office; the chairman of the Montana Coal Board; one Montana resident, residing in the area impacted by the plant; one North Dakota resident, residing in the area impacted by the plant; one person from each state appointed by each state's respective Legislative Council chairman; and a chairman appointed by the other committee members.
3. A Tenneco plant impact assistance fund is created. Each state will contribute to that fund an amount equal to 10 percent of the coal severance tax revenue for coal mined in that state for the plant using the lesser of the two states' coal severance tax rates. North Dakota's share is taken from the 35 percent coal severance tax allocation for energy impact grants.
4. The commission may seek loans and grants from either state's impact assistance programs; however, moneys received from a party state's impact assistance program may be used only in the state from which the money is received.
5. The commission may provide loans and grants to political subdivisions impacted by the Tenneco plant.
6. The impacted political subdivisions may seek financial assistance from the commission and their state's energy development impact agency.
7. The interstate compact becomes effective after both states have enacted the compact in substantially similar form and when the necessary permits for siting of the plant have been approved and issued under the North Dakota Energy Conversion Siting Act and the Montana Major Facility Siting Act.
8. An appropriation of $50,000 is authorized when the compact comes into force.

The Energy Development Impact Office opposed certain provisions of the interstate compact proposal because it establishes a different and separate level of government on a subject matter over which the Energy Development Impact Office already operates and has expertise. Testimony from that office indicated concern over the potential problems of coordinating the impact assistance between the commission and the two party states. The Energy Development Impact Office also testified there may be a problem in the compact provision allowing coal impact loans to North Dakota political subdivisions in advance of actual coal mining. The impact office expressed concern that, because there will be no coal mined in North Dakota

for the plant under Tenneco's preferred scenario for the first 15 to 20 years of plant operation, and because the repayment does not begin until coal is mined in this state, these loans might as well be grants.

Testimony indicated that the committee believes the proposed Tenneco plant presents a unique situation for which the provisions of the proposed interstate compact are well suited to meet. A mitigating factor with regard to the coordination of assistance problem voiced by the Energy Development Impact Office is the fact that both the director of the North Dakota Energy Development Impact Office and the chairman of the Montana Coal Board, the heads of the two states' impact aid programs, are members of the commission.

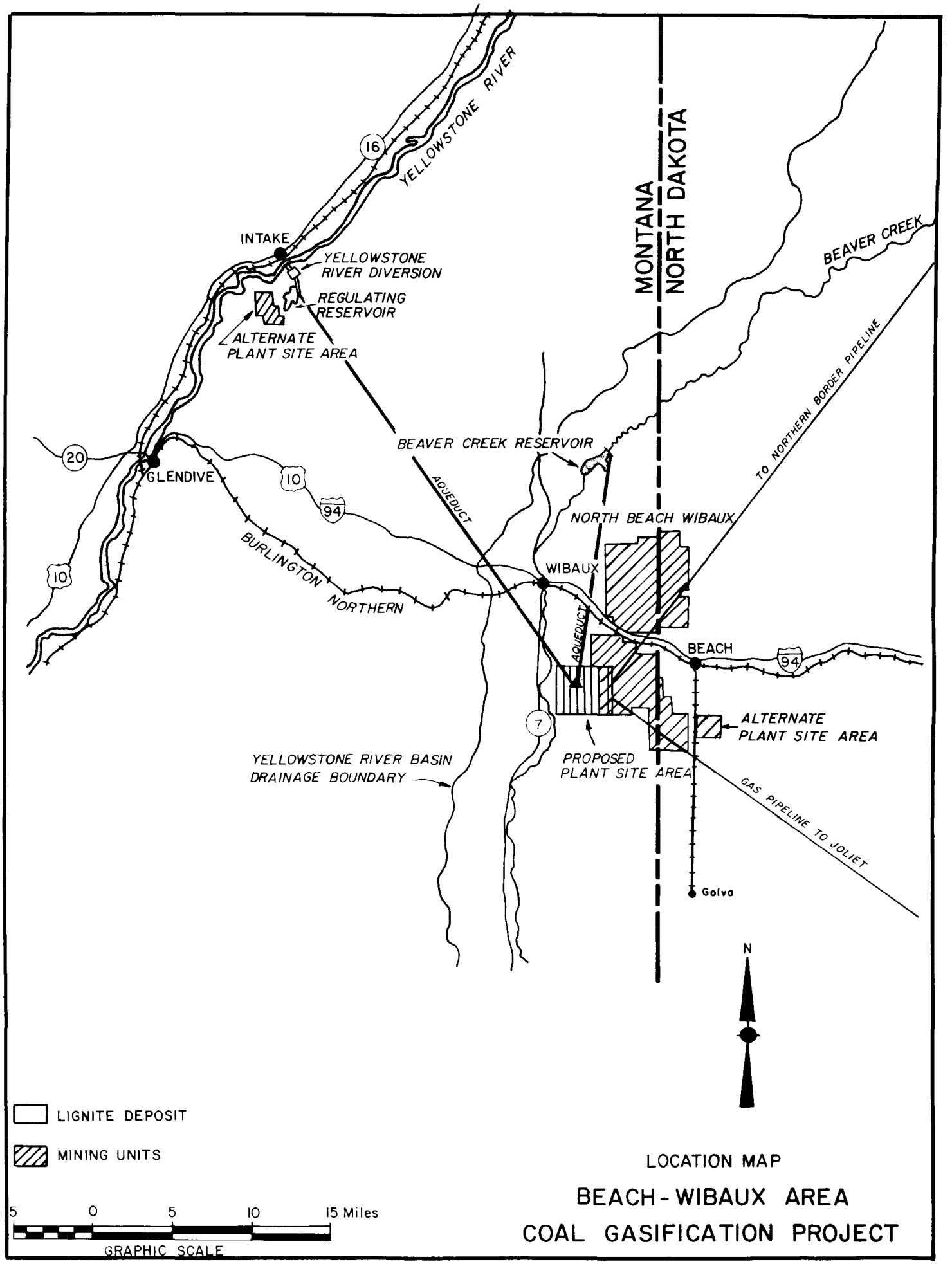
Coal Development Impact Loans

The committee also considered a proposal to allow the Board of University and School Lands, which is charged under North Dakota Century Code Sections 57-62-02 and 57-62-03 with the authority of making loans to energy-impacted political subdivisions, to provide these loans in advance of actual coal mining in the area. The board has interpreted these sections as not allowing loans to coal-impacted areas prior to actual coal mining in that area. The committee also discussed the possibility of authorizing the board to negotiate a repayment settlement for coal impact loans provided in anticipation of actual coal mining but where the coal development does not take place. The committee decided this proposal could be discussed as possible legislation during the 1985 Legislative Assembly.

Recommendations

The committee recommends Senate Bill No. 2095 to enter into an interstate compact with Montana as described previously in this report. The bill would create an interstate compact commission and fund which would receive money from both states equal to 10 percent of the lesser of the two states' coal severance tax revenues from the coal produced for the Tenneco plant. Political subdivisions in both states would be allowed to seek financial assistance from the interstate compact fund as well as their own state's coal impact aid programs. The interstate compact impact assistance program would be coodinated with the party states' impact aid programs through the chief officers of the two states' coal impact aid programs who would be members of the commission. The committee recommends this bill because it was concluded it is in this state's and Montana's best interests to have an impact mitigation strategy in place before the siting of the Tenneco project's plant and mining facilities is finalized. Once the timing and location of the plant's facilities are finalized it may be too late for a two-state solution to the problem to be reached.

The committee also recommends House Bill No. 1087 to allow the Board of University and School Lands to provide loans to coal-impacted areas in this state in advance of actual coal mining. The committee recommends the bill to allow the board additional flexibility to provide necessary financial assistance to political subdivisions experiencing impacts prior to actual coal mining.


YELLOWSTONE RIVER
16
INTAKE
YELLOWSTONE RIVER DIVERSION
REGULATING RESERVOIR
ALTERNATE PLANT SITE AREA
MONTANA
NORTH DAKOTA
BEAVER CREEK
TO NORTHERN BORDER PIPELINE
BEAVER CREEK RESERVOIR
AQUEDUCT
20
GLENDIVE
10
94
BURLINGTON NORTHERN
NORTH BEACH WIBAUX
WIBAUX
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7
ALTERNATE PLANT SITE AREA
PROPOSED PLANT SITE AREA
YELLOWSTONE RIVER BASIN DRAINAGE BOUNDARY
GAS PIPELINE TO JOLIET
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N
LIGNITE DEPOSIT
MINING UNITS
5 0 5 10 15 Miles
GRAPHIC SCALE
LOCATION MAP
BEACH-WIBAUX AREA
COAL GASIFICATION PROJECT

WATER COMMITTEE

The Water Committee was assigned four studies. Senate Concurrent Resolution No. 4021 directed a study of the implementation of water user fees and the use of those fees for the development of water resources in the state. Senate Concurrent Resolution No. 4023 directed a study of the methods that could be used to assist local entities of government within the state to finance critical water programs including planning and construction of those facilities. Senate Concurrent Resolution No. 4036 directed a study of the financing and funding needs for development of North Dakota's water resources and to study the procedure and manner in which the resources trust fund could provide financial assistance for the development of water supply projects in this state. Senate Concurrent Resolution No. 4020 directed a study of joint water resource boards and the selection of water managers for water resource districts, with the objective of determining the most appropriate method to provide for the management of water resources of this state at the local level.

Committee members were Senators Gary J. Nelson (Chairman), Adam Krauter, Herschel Lashkowitz, Shirley W. Lee, Rick Maixner, Rolland W. Redlin, Floyd Stromme, Gerald Waldera, and Frank A. Wenstrom; and Representatives Clare H. Aubol, Jim Brokaw, William G. Goetz, Bill Lardy, Peter Lipsiea, Ray Meyer, Robert E. Nowatzki, Glenn A. Pomeroy, Don Shide, and Wade Williams.

The report of the committee was submitted to the Legislative Council at the biennial meeting of the Council in November 1984. The report was adopted for submission to the 49th Legislative Assembly.

WATER DEVELOPMENT FINANCE

House Concurrent Resolution Nos. 4021, 4023, and 4036 were considered jointly by the committee under the topic of water development finance in North Dakota.

Existing Funding Sources

The financing of water projects is a multileveled system in this country consisting of federal, state, local, and private sources. Federal water development authorities include the United States Army Corps of Engineers, Bureau of Reclamation, Soil Conservation Service, Agricultural Stablilization and Conservation Service, Farmers Home Administration, Bureau of Land Management, Fish and Wildlife Service, and Department of Housing and Urban Development.

Water development authority on the state level is found primarily with the Water Commission, which has general power and jurisdiction over the waters in this state. The commission has broad powers to develop the waters of the state for domestic, agricultural, and municipal needs, irrigation, flood control, recreation, and wildlife conservation. Through the commission the contract fund created under North Dakota Century Code (NDCC) Section 61-02-64 has been North Dakota's primary source of funding for water-related activities and projects. Moneys for the contract fund have been expended by the commission for cost-sharing for water-related projects and various water-related studies. Much of this cost-sharing has been with local water resource districts.

The Water Commission has historically had requests for funding from the contract fund far in excess of its funding capacity. The 1983 Legislative Assembly appropriated approximately $2.3 million to the contract fund but the commission received approximately $43 million in funding requests for proposed water projects.

Another state level funding source for water development is the 10 percent of the oil extraction tax earmarked for the debt service on the Southwest Pipeline Project bonds and the resources trust fund. Any moneys in excess of that needed for the debt service on the Southwest Pipeline Project bonds is deposited in the resources trust fund, which is available to the Water Commission for comprehensive water supply facilities and rural water systems. It has been estimated the resources trust fund will have a balance of approximately $3.1 million at the end of the 1983-85 biennium.

Several other state level funding sources exist. The Legislative Assembly appropriates funds to the Department of Health for its lake protection and rehabilitation program. The Bank of North Dakota administers the community water facility loan program which supplements loans from the Farmers Home Administration for small community and rural water system water supply projects. This program is funded from a $10 million appropriation from the undivided profits of the Bank of North Dakota. Almost all of the fund has been loaned out or has been pledged for projects. The Legislative Assembly also appropriates funds to the Game and Fish Department and the Parks and Recreation Department for funding programs for water projects under their jurisdictions. Although the State Engineer is authorized under NDCC Section 61-04-06.2 to assess fees for water use, the Attorney General has interpreted this authority to be limited to the amount necessary to recover the administrative costs of issuing the water permits.

Local funding sources include the water project financing powers of the water resource districts, joint water resource districts, irrigation districts, the Garrison Diversion Conservancy District, and the West River Water Supply District. These entities have the authority to raise funds for water development projects by special assessments and by mill levies. In addition, municipalities have the authority to construct water supply facilities and may finance these projects by issuing various types of debt instruments.

Private sources and authorities for water development finance include private irrigation corporations under NDCC Chapter 61-13 and rural water systems.

Because of decreased federal participation in funding water projects, including water storage facilities and waste treatment plants, state and local governments are required to contribute a larger share of the money for necessary capital improvements. It is anticipated that the traditional cost-sharing arrangement of 87 percent federal/13 percent state for most water storage projects will nearly reverse itself to 21 percent federal/79 percent state. To respond adequately to water resource needs, both of a water quantity and quality nature, state and local governments must come up with large amounts of capital to finance necessary water projects.

To meet their water resource needs under this situation, state and local governments in this country have financed water projects in many ways including the use of debt financing by the issuance of general

obligation bonds and revenue bonds, the formation of economic development funds, bond banks, enterprise authorities, and state bond guarantee funds for local debt instruments. Other financing mechanisms that have been used to finance water projects include the imposition of water user fees; leasing arrangements including lease-purchase agreements, operating leases, and sale-leaseback arrangements; and private sector water development of projects for public use.

Citizens Advisory Committee

Under the authority of Senate Concurrent Resolution No. 4023, a citizens advisory committee was created for the purpose of providing local level input to the committee.

Citizens advisory committee members were Andy Mork, North Dakota Water Users Association (Chairman); Loren Myran, Rural Water Systems Association; Robert Schempp, North Dakota League of Cities; Herb Urlacher, Water Resource Districts Association; Robert Thompson, North Dakota Water Resource Districts Association; Dave Sprynczynatyk, Water Commission; William L. Guy, Bismarck; Leonard Jacobs, North Dakota Association of Counties; Homer Engelhorn, Garrison Diversion Conservancy District; Bob Yon, West River Water Supply District; Randy Pope, Water Users Association; Loren DeWitz, Irrigation Association; and Glenn Kellerman, Rural Water Systems Association. Senator Gary J. Nelson, Senator Rolland W. Redlin, and Representative William G. Goetz represented the Water Committee as nonvoting members of the advisory committee.

The Water Committee and the advisory committee utilized the following list of issues as a format for their study of water project financing:

1. What are the water development needs in the state?
2. What level of funding is required to provide the water development needs in the state?
3. What is the proper authority for handling the water development program in the state? Is the authority of our state and local water agencies adequate for all types of water development activities and projects?

1983 State Water Plan

The committee and the citizens advisory committee received testimony on and examined the Water Commission's "1983 State Water Plan" to determine the water development needs in the state. The 1983 state water plan uses the years 1990, 2000, and 2020 as benchmark years for measuring the water requirements in the state and the degree to which the plan features will meet those needs. The chart at the end of this report is a graphical representation of the water needs of the state for each of the benchmark years showing developed supplies, state water plan components, and unmet needs.

The 1983 state water plan also addressed the level of funding required to meet the water needs in the state. The "Early Action Program" of the state water plan encompasses those water projects scheduled under the plan through the benchmark year of 1990. The table at the end of this report summarizes the estimated costs of the early action program in 1980 dollars.

Citizens Advisory Committee Recommendations

The citizens advisory committee made the following recommendations to the committee as a result of its study:

1. North Dakota should undertake water development as a state program in an aggressive manner.
2. Local involvement and federal participation are essential for water development and management in North Dakota.
3. The authorized and federally funded Garrison Diversion Unit should be considered the first and highest priority for water development in North Dakota.
4. The resources trust fund should be North Dakota's principal water development fund for state level funding of all water projects, including supply, treatment, distribution, municipal, rural, irrigation, flood control, recreation, fish and wildlife, and industrial water, excluding wastewater management projects. Funding of water projects through the resources trust fund shall only be by legislative appropriation.
5. The Water Commission should serve as the state agency through which all water development and water management projects and activities in North Dakota, excluding wastewater management projects, are reviewed, funded, or otherwise receive state participation or assistance.
6. The resources trust fund should be expanded so that funding can be provided for all water-related projects, instead of being limited to water supply facilities, and procedures and criteria should be developed for providing financial assistance for water projects from the fund.
7. The share of the oil extraction tax going to the resources trust fund should be increased from 10 percent to 15 percent.
8. The $11.7 million appropriated by the 1983 Legislative Assembly from the resources trust fund for purposes not related to water should be returned to the resources trust fund and used for initial construction of the Southwest Pipeline Project.
9. A portion of the coal severance tax revenues going to the coal development impact fund should be shifted into the resources trust fund for water resource development.
10. The existing method of funding the Water Commission contract fund should be continued.
11. The Water Commission should develop a systematic and equitable method of assessing fees against water users and water permittees to recover a part or all of the administrative costs incurred in regulating and administering the appropriation of water.
12. Water use taxes should not be imposed by the Legislative Assembly against any water users.
13. The Bank of North Dakota should act in an advisory capacity to the Water Commission in developing financing packages and structures for water projects.
14. The community water facility loan fund should be kept intact, but no further legislative appropriations should be made to that fund at this time.
15. The basic concepts established in the community water facility loan fund should be considered by the Water Commission in developing criteria for funding water projects from the resources trust fund.

Water Use Fees and Taxes

The committee received information and testimony concerning the imposition of water use fees or water use taxes as a revenue source for water development in this state. The information included estimates of revenue from various levels of water use taxes on industrial users of Missouri River water. The alternative tax rates were based on the amount of water actually permitted for use by those industrial users.

The Public Service Commission indicated that a water use tax imposed on electrical generating companies under its ratesetting jurisdiction would be passed on to the consumers as a legitimate expense of doing business. Information was also received which indicated that water use taxes imposed on electric cooperatives would also be passed on to consumers.

Proponents of the concept of imposing water use fees or taxes argued that because of the severe need for water development in this state, the state could justifiably treat its water resources as a scarce natural resource, the use of which by industry could be taxed. Although the citizens advisory committee recommended that the Water Commission recover its administrative costs in regulating water by imposing a water use fee, it opposed the imposition of water use taxes over that amount necessary to recover administrative costs.

The North Dakota Association of Rural Electric Cooperatives, Basin Electric Power Cooperative, the North Dakota Water Users Association, Great Plains Gasification Associates, and the United Power Association testified against the imposition of any water use tax above that necessary to recover the administrative expenses of the Water Commission. Most of these entities would be willing to pay their fair share of the administrative costs of the Water Commission for regulating water in this state, but they were unwilling to be taxed in addition to that amount and in a manner by which only industrial users would be subject to the tax.

The committee defeated a motion to have a bill drafted to impose a water use fee on industrial users of Missouri River water sufficient to recover the administrative costs of the Water Commission for regulating water use in this state.

Coal Severance Tax

A proposal that a portion of the coal severance tax revenue be shifted to the resources trust fund for water resource development resulted in testimony from the North Dakota Lignite Council and the Tri-County Association opposing any reallocation of coal import moneys because of the continuing need of such moneys in the coal impacted areas.

The committee tabled discussion of that issue.

Bank of North Dakota

A proposal that the Water Commission utilize the Bank of North Dakota in an advisory capacity when developing financing packages and structures for water projects was accepted by the committee. The committee received information from the Bank of North Dakota and agreed that the Bank could provide valuable services to the Water Commission with regard to financial planning for water projects.

Recommendations

The committee, through its recommendations and other committee action, accepted the citizens advisory committee recommendations that the Garrison Diversion Unit should have the first and highest priority for water development in the state; that the resources trust fund should be the principal water development fund in the state and that it be available for all water-related projects by legislative appropriation only; that the resources trust fund be allocted 15 percent of the oil extraction tax revenue; that the Water Commission's contract fund continue to be a separate fund for water development; that the $11.7 million appropriated from the resources trust fund by the 1983 Legislative Assembly for nonwater-related purposes be returned; and that the Bank of North Dakota should act in an advisory capacity to the Water Commission to develop financing packages for water projects. The committee did not accept the citizens advisory committee's recommendation that a portion of the coal severance tax revenue be allocated for water projects. The committee makes no recommendations with regard to the citizens advisory committee recommendations concerning the community water facility loan program and the imposition of water use fees or taxes.

The committee recommends Senate Concurrent Resolution No. 4010, designating the construction and completion of the federally authorized and funded Garrison Diversion Unit as having the first and highest priority for water development in North Dakota. The concurrent resolution is recommended, in part, because of the federal Garrison Diversion Commission's investigation of that project.

The committee recommends House Bill No. 1088 to increase from 10 to 15 percent the amount of the oil extraction tax allocated to the Southwest Pipeline Project bond sinking fund and the resources trust fund and expanding the projects that can be funded from the resources trust fund from "comprehensive water supply facilities" to "water-related projects" that may be engaged in by the Water Commission. The committee agreed with the citizens advisory committee recommendation that the increase of this oil extraction tax allocation was a necessary step to establish the resources trust fund as the principal water development fund in the state and to facilitate the marketability of any bonds that might be sold in the future for the Southwest Pipeline Project.

The committee recommends House Bill No. 1089 to transfer from the general fund to the resources trust fund an amount equal to the $11,722,662 transferred from the resources trust fund by the 1983 Legislative Assembly and appropriated for the Grafton State School.

The committee recommends House Bill No. 1090 to establish a procedure for seeking financial assistance for the development of water-related projects from the resources trust fund. The bill provides that political subdivisions and rural water systems, when seeking legislative appropriation from the resources trust fund for a water-related project or study, must submit the proposed project or study to the Water Commission for review. The bill allows the commission to require the project sponsor to supply necessary information to facilitate its review of the project or study. The commission may also contact or require the project sponsor to conduct a preliminary study for the project or study in accordance with criteria adopted by the commission by rule. House Bill No. 1090 further provides that each bill appropriating money from the resources trust fund for a water-related project or study must be accompanied by a report of the Water Commission. The report must include:

1. A summary of the engineering feasibility study of the proposed water project.
2. Statements concerning the proposed water project as it relates to the comprehensive state water plan of the Water Commission.
3. The need for the proposed water project, including any alternative projects which would satisfy such need.
4. The availability of other sources of funding or financial assistance for such water project.
5. A recommendation as to whether or not the proposed water project should receive financial assistance through legislative appropriation from the resources trust fund.
6. Other items as deemed necessary or appropriate by the Water Commission.

House Bill No. 1090 authorizes the Water Commission to adopt criteria governing the review and recommendation of these proposed water projects. The committee by adopting this bill retains the Water Commission's contract fund without change. Testimony from the Water Commission indicated that the contract fund would continue to be used as at present and would focus on smaller projects and the resources trust fund would be used primarily for larger projects and only pursuant to legislative appropriation.

The committee recommended to the Water Commission that it utilize the services of the Bank of North Dakota in an advisory capacity when developing financing packages and structures for water projects to take advantage of that institution's financing expertise.

WATER RESOURCE DISTRICTS

1983 House Concurrent Resolution No. 4020 is a continuation of studies conducted during the 1979-80 and 1981-82 interims. 1979 House Concurrent Resolution No. 3022 directed a study of the powers, duties, and jurisdictional boundaries of water management districts and legal drain boards with the objective of determining the most effective and efficient method of providing for management of this state's water resources at the local level. 1981 House Bill No. 1077 was the product of this study. The bill provided, in part, for:

1. Establishment of water resource district boundaries along watershed lines where feasible.
2. Special election of water resource district board managers.
3. Elimination of existing water management districts and boards to avoid duplication of jurisdiction.
4. Water resource district authority to levy up to four mills with two additional mills being available for joint board action.

The bill was substantially amended before passage to provide for:

1. Elimination of hydrological boundaries, unless approved by the 1983 Legislative Assembly, and reinstatement of county boundaries.
2. Elimination of the provision for election of managers in favor of appointment of water managers by the boards of county commissioners within each district.

The bill also contained a provision, codified as North Dakota Century Code Section 61-16.1-03, that directed the State Engineer to establish proposed boundaries for water resource districts using hydrological patterns and to report those proposals to the Legislative Council or a designated interim committee.

1981 House Concurrent Resolution No. 3065 directed continuation of the study relating to the jurisdictional boundaries of water management districts and the selection of management for the districts. The State Engineer submitted the proposed boundaries to the 1981-82 interim Natural Resources Committee for its consideration and review. Testimony received by that committee from various water resource districts indicated little support for reorganization of water district boundaries along watershed lines or for the election, rather than appointment, of water managers. The committee elected to address the problem of how water resource districts could solve water problems common to a river basin or region by examining possible amendments to existing joint water resource district board statutes rather than a reorganization of existing water resource district boundaries.

The report of that committee described three basic problems facing joint boards in their attempts to effectively and efficiently manage water within a region. First, despite the fact that a water problem may be common to an entire river basin or region, not all water resource boards in a river basin or region are required to participate in the formation and operation of a joint board. Second, it is difficult to finance joint projects since it is difficult to obtain unanimous approval of each of the county commissions within a joint board area for a necessary mill levy. Third, if only a portion of a water district lies within a joint board area, a tax levy by the joint board must be levied over the entire district and not just the area within the joint board.

That committee considered but did not recommend a bill draft that would have given the State Engineer the authority to order the establishment of a joint power river basin or region upon appropriate petition from the water resource districts. Any district failing to comply with the order of the State Engineer would not have been eligible to receive any state funds authorized by NDCC Title 61. In addition, the joint water resource district board would have had the authority to require the boards of county commissioners of the member districts to levy up to two mills for joint board expenses and costs and to levy the tax only over that land in each member district within the river basin or region subject to the joint board order or agreement.

Issues Considered

The committee viewed its study under House Concurrent Resolution No. 4020 as an attempt to address the remaining problems resulting from the 1981 legislation creating the water resource districts. The committee received testimony from the Water Commission, State Engineer, North Dakota Water Resource Districts Association, North Dakota Association of Counties, and North Dakota County Commissioners Association.

The committee focused on the procedures and practices governing joint water resource district boards and the selection of water managers for water resource district boards. The committee addressed issues relating to the desirability of utilizing joint water resource district boards as a means of efficiently and effectively managing this state's water resources, whether managers of water resource district boards should be elected or appointed, whether county commissioners should be allowed to serve as water resource district managers, whether the term of office

of water resource district managers should be reduced, and various technical matters.

The committee received a proposal from the North Dakota Association of Counties to reduce the term of office for water resource district managers from five years to three years. The North Dakota Association of Counties indicated the change is necessary to allow more accountability of water resource district managers to the board of county commissioners which appointed them and the public. The Water Resource Districts Association opposed the reduction of the term of office of water resource district managers because of the negative effect it would have on the continuity of membership of district boards necessary for water projects that may take many years to complete.

The committee examined the question whether water resource district managers should be appointed by the board of county commissioners or elected. The committee received testimony opposing the election of water resource district managers from the Water Resource Districts Association and the North Dakota County Commissioners Association. The testimony indicated that the 1981 legislation creating the water resource districts orginally provided for the election of water managers because the districts were planned to be on a watershed basis; watershed boundaries, however, were never adopted.

The committee reviewed a bill draft to allow one county commissioner to be a member of a water resource district board. Section 61-16-08 prohibits a county commissioner from being a water resource district manager. The County Commissioners Association endorsed the concept of allowing county commissioners to serve on water district boards as a method of increasing communication between the two entities. In addition, the change would allow more control by county commissions over district activities. The Water Resource Districts Association opposed the concept because of possible conflicts of interest that may arise if a county commissioner can also be a water resource district manager and because a county commissioner would probably not be able to serve enough time to duties as a water resource district manager. The committee tabled discussion of the proposal.

The committee reviewed a proposal to allow water resource districts which are working together under a joint water resource district agreement to levy the existing two-mill levy for joint water resource district board purposes upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. Testimony indicated that existing law does not allow the mill levy to be applied only to the land which is benefited by the joint agreement. The change would allow the mill levy to be applied only to the land in the district which is the subject of the joint water resource district agreement. Existing law requires the levy to be over the entire district whether or not the land is in the relevant watershed. The Water Resource Districts Association favored the proposal because it allows the joint water resource district boards to distribute the costs and expenses of the joint board more equitably. Opposition to the proposal indicated assessors in the counties would have difficulty deciding where the watershed boundaries were located. The committee received information from the Water Commission that watershed boundaries have been mapped and these maps can be used by the assessors in the counties.

The committee received proposals from the Water Resource Districts Association and the Water Commission making various technical and substantive amendments in the water resource district laws. The County Commissioners Association and the North Dakota Association of Counties opposed these changes because they believed watershed management should be on the county level and the changes took authority away from the counties. The committee opposed the portion of the proposal that eliminated mandatory master plans and public hearings for master plans for water resource district water management activities.

Recommendations

The committee recommends Senate Bill No. 2096, proposed and endorsed by the North Dakota Association of Counties, to reduce the term of office for water resource district managers from five years to three years. The committee agreed with the North Dakota Association of Counties that the change allows more accountability of water resource district managers to the boards of county commissioners and the public.

The committee recommends that water resource district managers continue to be appointed by the boards of county commissioners rather than be elected. The committee agreed with the Water Resource Districts Association and the North Dakota County Commissioners Association that the election of the water district managers is not necessary because watershed boundaries for water resource districts have not been adopted.

The committee recommends Senate Bill No. 2097 to allow water resource districts that are working together under a joint water resource district agreement to levy the existing two-mill levy for joint water resource district board purposes upon the taxable valuations of the real property within each district within the river basin or region subject to the joint agreement. The bill allows joint water resource district boards to distribute the costs and expenses of joint boards more equitably. The change allows the mill levy to be applied only to the land in the district which is the subject of the joint water resource district agreement.

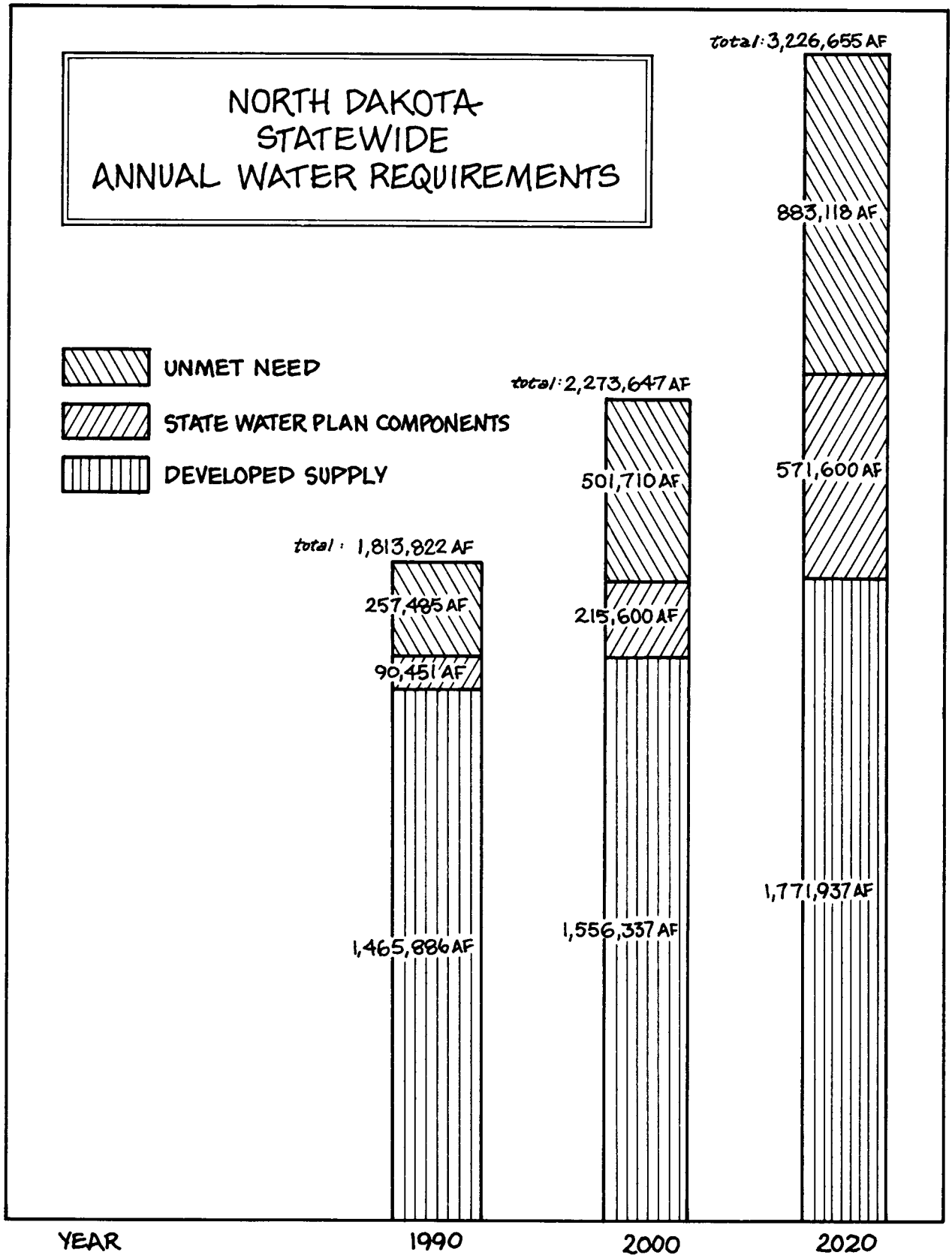
NORTH DAKOTA
STATEWIDE
ANNUAL WATER REQUIREMENTS
UNMET NEED
STATE WATER PLAN COMPONENTS
DEVELOPED SUPPLY
total: 1,813,822 AF
257,485 AF
90,451 AF
1,465,886 AF
total: 2,273,647 AF
501,710 AF
215,600 AF
1,556,337 AF
total: 3,226,655 AF
883,118 AF
571,600 AF
1,771,937 AF
YEAR
1990
2000
2020

TABLE
STATEWIDE RECOMMENDED PLAN – EARLY ACTION PROGRAM

Program	Program Totals		
	Federal Costs	Initial Costs State/Local	Total
SURFACE WATER CONTROL			
Multipurpose reservoirs		$37,017,500	$37,017,500
Single purpose reservoirs		21,324,471	21,324,471
Instream control	$59,826,230	42,972,370	102,798,600
Multifeature projects	19,445,800	22,930,200	42,376,000
RELATED LAND PROGRAMS			
Drainage		841,068	841,068
ENVIRONMENTAL AND RESOURCE ENHANCEMENT			
Protection and management	45,168,000	15,056,000	60,224,000
Outdoor recreation	178,500	178,500	357,000
Wastewater management	25,905,000	8,635,000	34,540,000
Water supply treatment		22,169,000	22,169,000
ADDITIONS AND MODIFICATIONS TO EXISTING PROJECTS			
Reservoir storage	156,000	650,500	806,500
GRAND TOTALS	$150,679,530	$171,774,609	$322,454,139

SOURCE: 1983 STATE WATER PLAN EXECUTIVE SUMMARY

SENATE BILL SUMMARIES

Senate Bill No. 2043 — Consolidation of Regulatory Authority. This bill transfers the authority for licensing and bonding of livestock auction markets from the Livestock Sanitary Board to the Commissioner of Agriculture. (Agriculture Committee)

Senate Bill No. 2044 — Investigative Authority. This bill grants agencies regulating livestock markets and dealers authority to issue cease and desist orders, authority to obtain injunctions, and greater investigative and hearing authority. (Agriculture Committee)

Senate Bill No. 2045 — Financial Records Release. This bill requires livestock auction markets and dealers to file releases authorizing relevant state agencies to obtain financial records held by third parties. (Agriculture Committee)

Senate Bill No. 2046 — Surety Bond Requirements. This bill increases the minimum bond requirement for livestock dealers from $5,000 to $10,000. (Agriculture Committee)

Senate Bill No. 2047 — Title to Livestock. This bill provides that title to livestock remains with the seller until settlement on any check given for the livestock purchase is made. (Agriculture Committee)

Senate Bill No. 2048 — Acquisition of Equipment by Variable Rate Demand Notes. This bill authorizes the Office of Management and Budget to lease or acquire equipment for state agencies and institutions by issuing and selling variable rate demand notes. (Budget "A" Committee)

Senate Bill No. 2049 — Composition of the State Investment Board. This bill adds as members of the State Investment Board the executive secretary of the Teachers' Fund for Retirement and two private sector members experienced in the field of investments. (Budget "B" Committee)

Senate Bill No. 2050 — Investment Goals and Objectives and Performance Reports of the State Investment Board and Public Employees Retirement Board. This bill requires the funds under the control of the State Investment Board and the Public Employees Retirement Board to establish policies on investment goals and objectives and annually prepare a report on the funds' investing performance. (Budget "B" Committee)

Senate Bill No. 2051 — Investments of the State Investment Board. This bill allows the State Investment Board to invest up to 20 percent of the assets of each fund under its control in common or preferred stocks. (Budget "B" Committee)

Senate Bill No. 2052 — Investments of the Teachers' Fund for Retirement. This bill imposes a prudent person standard for investments of the Teachers' Fund for Retirement. (Budget "B" Committee)

Senate Bill No. 2053 — Restrictions On and Allowances of State Reimbursement of Long-Term Care Facilities. This bill requires the Department of Human Services to reimburse bad debts expense, personal comfort items, and customary advertising costs for those long-term care facilities that charge private pay patients a daily rate that does not exceed the rate paid by the department for persons under the Medicaid program. In addition, the bill prohibits the department from limiting reimbursements for compensation of administrators, fees of boards of directors, pension expenses, and other costs of administration, except to the extent those costs exceed the cost of the applicable percentile group established by the department. (Budget "C" Committee)

Senate Bill No. 2054 — Recovery of Depreciation Expense Reimbursement Upon Sale of Long-Term Care Facility. This bill requires the seller of a long-term care facility to pay to the Department of Human Services an amount, not to exceed the amount of any capital gain on the sale, equal to all depreciation expense for which the seller was reimbursed by the department. (Budget "C" Committee)

Senate Bill No. 2055 — Limitation of State Reimbursement for Rental Expenses of Long-Term Care Facilities. This bill requires the Department of Human Services to limit rental expense reimbursement when a provider of services sells a long-term care facility to a third party and leases the facility from that provider. (Budget "C" Committee)

Senate Bill No. 2056 — Limit on Allowable Expenses. This bill increases the limit on allowable expenses for charitable gambling organizations to 40 percent of adjusted gross proceeds. The bill allows computation of this limitation on an annual basis, and also allows charities that own the premises to include utility costs as an allowable expense. (Charitable Gambling Committee)

Senate Bill No. 2057 — Charitable Gambling Rent Limitation. This bill limits monthly rent paid by charitable gambling organizations to 2.5 percent of adjusted gross proceeds, or for places where blackjack is played, the lesser of 2.5 percent of adjusted gross proceeds or $150 per blackjack table. The bill imposes no rent limit on bingo sites. (Charitable Gambling Committee)

Senate Bill No. 2058 — Sports Pool Payback. This bill increases the payback by sports pools from two-thirds to 90 percent. (Charitable Gambling Committee)

Senate Bill No. 2059 — Local Authorization of Sports Pools. This bill allows local subdivisions to authorize sports pools, in addition to the raffle and bingo authority local subdivisions already have. (Charitable Gambling Committee)

Senate Bill No. 2060 — Waiting Time for Changing Sponsoring Organizations. This bill requires a two-month waiting time between sponsoring charities at a site hosting charitable gambling. The waiting time is waived if the outgoing charity and the host site agree. (Charitable Gambling Committee)

Senate Bill No. 2061 — Action Against Liquor License for Gambling Violations. This bill authorizes revocation of the liquor license of a licensed retailer that violates the charitable gambling law or the general criminal prohibition of gambling. (Charitable Gambling Committee)

Senate Bill No. 2062 — Special Education Boarding Care Costs. This bill requires the Department of Human Services to reimburse school districts for 70 percent of the costs of room and board paid on behalf of handicapped children placed in facilities outside their school districts of residence for special education services not available within their school districts of residence. (Education "A" Committee)

Senate Bill No. 2063 — Special Education Costs. This bill makes the state financially responsible for the costs of a child who has been ordered by a court or

juvenile supervisor to stay for any prescribed period of time at a state special education facility, foster home, or home maintained by any nonprofit corporation. The bill also clarifies which school district is the legal residence for children who are placed voluntarily outside their school districts of residence for special education services. (Education "A" Committee)

Senate Bill No. 2064 — Special Education Area Coordinator Pilot Program. This bill establishes a special education area coordinator pilot program to serve no fewer than 20,000 school age children. (Education "A" Committee)

Senate Bill No. 2065 — School District Reorganization, Annexation, and Dissolution. This bill repeals current school district reorganization, annexation, and dissolution laws and enacts a chapter providing general provisions applicable to all three procedures, a chapter dealing specifically with reorganization, a chapter dealing specifically with annexation, and a chapter dealing specifically with dissolution. (Education "B" Committee)

Senate Bill No. 2066 — Ballot Cards for Electronic Voting Systems. This bill requires in precincts in which electronic voting systems are used that the ballot card contain the names of all candidates and the contents of measures. (Elections Committee)

Senate Bill No. 2067 — Ballot Cards for New Electronic Voting Systems. This bill requires in precincts in which electronic voting systems purchased after June 30, 1985, are used that the ballot card contain the names of all candidates and the contents of measures. (Elections Committee)

Senate Bill No. 2068 — Rectangle on Ballot. This bill requires that a rectangle must be printed on all ballots, ballot cards, and ballot envelopes in which the inspector or judge should stamp to make it an official ballot. (Elections Committee)

Senate Bill No. 2069 — Canvass of Votes. This bill provides, at the option of the county auditor in any county using an electronic voting system or electronic counting machines, that the county canvassing board, in lieu of the election boards, may canvass the votes for those precincts using either system. (Elections Committee)

Senate Bill No. 2070 — Composition of the County Canvassing Board. This bill provides for an alternative composition of the county canvassing board when the only item on the ballot is either a bond issue question or the election of a judge, or both. (Elections Committee)

Senate Bill No. 2071 — Electioneering on Election Day. This bill bans electioneering within 300 feet of a polling place on election day and repeals present provisions relating to electioneering. (Elections Committee)

Senate Bill No. 2072 — Membership of Certain State Boards. This bill revises the membership of the Board of University and School Lands, the State Board of Equalization, and the Public Employees Retirement Board. (Government Reorganization Committee)

Senate Bill No. 2073 — Sharing of Payroll Information Data. This bill allows the sharing of payroll information data between the Commissioner of Labor and the Workmen's Compensation Bureau. (Government Reorganization Committee)

Senate Bill No. 2074 — Health Council Membership. This bill adds four consumer members to the Health Council to represent business, labor, agriculture, and the elderly. (Industry, Business and Labor Committee)

Senate Bill No. 2075 — Certificate of Need Thresholds and Exemptions. This bill fixes the threshold for certificate of need review of health care facility capital expenditures, clarifies the scope of coverage concerning equipment used to provide services to patients of health care facilities, and removes the exemption for physicians and dentists for otherwise reviewable transactions. (Industry, Business and Labor Committee)

Senate Bill No. 2076 — Health Maintenance Organization Reports. This bill requires health maintenance organizations to report on a fiscal year, instead of a calendar year, basis to the Commissioner of Insurance. (Industry, Business and Labor Committee)

Senate Bill No. 2077 — Insurance Fees. This bill increases all fees collected by the Commissioner of Insurance from insurance companies to a minimum of $10 and establishes an insurance company appointment-of-agent fee of $10. (Industry, Business and Labor Committee)

Senate Bill No. 2078 — Main Insurance Code Revision. This bill revises the insurance laws pertaining to agents and sales, contracts of insurance, and insurance coverage. (Insurance Code Revision Committee)

Senate Bill No. 2079 — Housekeeping Insurance Code Revision. This bill makes the changes necessary throughout the North Dakota Century Code if Senate Bill No. 2078 is enacted. (Insurance Code Revision Committee)

Senate Bill No. 2080 — Eminent Domain and Public Service Commission Intervention in Rail Line Abandonment Cases. This bill grants limited power of eminent domain to small railroads establishing lines on abandoned railroad branchlines. The bill also requires the Public Service Commission to intervene in railroad line abandonment cases on the request of any shipper or political subdivision affected by the abandonment. (Judiciary "A" Committee)

Senate Bill No. 2081 — Limitations on Solicitation and Fundraising by Charitable Organizations. This bill repeals the limit on the amount a charitable organization may incur for solicitation and fundraising expenses. (Judiciary "B" Committee)

Senate Bill No. 2082 — Penalties for Fraud in Soliciting a Contribution for a Charitable Organization. This bill makes it a crime for a charitable organization, professional fundraiser, or professional solicitor, or agent thereof, to use fraud to solicit a contribution for a charitable organization. (Judiciary "B" Committee)

Senate Bill No. 2083 — Procedure for Levy of Execution. This bill provides for a procedure to levy an execution. (Judiciary "B" Committee)

Senate Bill No. 2084 — Foreclosure of Statutory Lien on Personal Property. This bill provides a procedure for the foreclosure of a statutory lien on personal property. (Judiciary "B" Committee)

Senate Bill No. 2085 — Foreclosure on Personal Property. This bill provides a new procedure for foreclosure on personal property. (Judiciary "B" Committee)

Senate Bill No. 2086 — Technical Corrections Act. This bill makes technical corrections to the North Dakota Century Code by eliminating inaccurate or obsolete name and statutory references and superfluous language, recognizing Supreme Court rules, and resolving conflicts between the constitution and a statute or between two statutes. (Judiciary "B" Committee)

Senate Bill No. 2087 — Reconciliation of Statutes. This bill allows legislative intent to be considered when resolving conflicts between statutes passed during a legislative session. (Judiciary "B" Committee)

Senate Bill No. 2088 — Use of a Headnote to Determine Legislative Intent. This bill provides that a headnote may not be used to determine legislative intent or the legislative history for any statute. (Judiciary "B" Committee)

Senate Bill No. 2089 — Benefits for Peacetime Veterans. This bill extends eligibility for certain veterans' benefit programs such as the Soldiers' Home and veterans' aid fund to peacetime veterans as well as to wartime veterans, and changes the name of the North Dakota Soldiers' Home to the North Dakota Veterans' Home. (Legislative Audit and Fiscal Review Committee)

Senate Bill No. 2090 — Legislative Wing Improvements. This bill appropriates $187,200 from the interest and income fund of the capitol building fund for the refinishing of woodwork and other improvements to the legislative wing. (Legislative Procedure and Arrangements Committee)

Senate Bill No. 2091 — Air Carrier Service Regions Based on Property Taxes. This bill establishes eight air carrier service regions defined by the airports serving the eight largest cities in the state, those cities being the ones that either have or have had service by scheduled airlines. The bill bases the regional boundaries on the property tax base necessary to provide funding needs for the respective airports. (Political Subdivisions "A" Committee)

Senate Bill No. 2092 — Air Carrier Service Regions Based on Planning Regions. This bill establishes eight air carrier service regions based on the planning regions used by the executive branch of government. The bill provides for either a statewide referendum on the bill or a referendum in each air carrier service region on request of a majority of counties in the region. (Political Subdivisions "A" Committee)

Senate Bill No. 2093 — County Airport Mill Levies. This bill allows counties to impose a mill levy to support an airport or airport authority, even in areas of the county where a city, township, or park district already has an airport levy. (Political Subdivisions "A" Committee)

Senate Bill No. 2094 — Airport Access Road Tolls. This bill authorizes airport authorities and counties, cities, park districts, and townships which operate air carrier airports (airports served by scheduled airlines) to establish toll access roadways to the air carrier terminal buildings. (Political Subdivisions "A" Committee)

Senate Bill No. 2095 — Tenneco Plant Impact Assistance Interstate Compact. This bill provides for this state to enter into, with Montana, the Tenneco Plant Impact Assistance Interstate Compact under which both states contribute moneys to mitigate the impacts of the proposed development of a large-scale coal gasification plant and mining facilities on the North Dakota-Montana border. (Tenneco Plant Committee)

Senate Bill No. 2096 — Terms of Water Resource District Managers. This bill reduces the term of office for water resource district managers from five to three years. (Water Committee)

Senate Bill No. 2097 — Joint Water Resource District Mill Levy. This bill provides that a joint water resource district board mill levy may be made only against the land in each water resource district within the river basin or region subject to the joint water resource district agreement. (Water Committee)

Senate Concurrent Resolution No. 4001 — State Investment Board Powers and Public Employees Retirement System Funds Study. This resolution directs the Legislative Council to study the investment powers and performance of the State Investment Board and funds of the Public Employees Retirement System. (Budget "B" Committee)

Senate Concurrent Resolution No. 4002 — Long-Term Care Facility Prospective Medicaid Reimbursement System. This resolution urges the Department of Human Services to revise its long-term care facility Medicaid reimbursement system by developing a prospective reimbursement system that sets reimbursement rates prior to the beginning of a reimbursement period and includes incentives for cost containment. (Budget "C" Committee)

Senate Concurrent Resolution No. 4003 — Long-Term Care Facility Code of Ethics. This resolution urges long-term care facilities to develop a long-term care facility code of ethics that includes uniform methods of determining the basis for charging for ancillary services and miscellaneous supplies. (Budget "C" Committee)

Senate Concurrent Resolution No. 4004 — Postsecondary Special Education. This resolution urges the United States Department of Education to approve the joint applications submitted by the North Dakota State University-Bottineau and the Bottineau Peace Garden Special Education Cooperative for federal funds to implement a program designed to train educable handicapped persons with marketable job skills in postsecondary educational institutions. (Education "A" Committee)

Senate Concurrent Resolution No. 4005 — Membership of Board of University and School Lands. This resolution amends the constitution to replace the State Auditor with the State Treasurer as a member of the Board of University and School Lands. (Government Reorganization Committee)

Senate Concurrent Resolution No. 4006 — Labor and Employment Services Consolidation. This resolution directs the Department of Labor, Job Service North Dakota, and the Workmen's Compensation Bureau to coordinate their efforts in providing labor and employment services. (Government Reorganization Committee)

Senate Concurrent Resolution No. 4007 — Support of Regional Airport Authorities With Minnesota. This resolution expresses the support of the Legislative Assembly for the establishment of regional airport authorities serving cities along the Minnesota-North Dakota border. (Political Subdivisions "A" Committee)

Senate Concurrent Resolution No. 4008 — Support of Regional Airport Authorities With South Dakota. This resolution expresses the support of the Legislative Assembly for the establishment of regional airport authorities serving cities along the South Dakota-North Dakota border. (Political Subdivisions "A" Committee)

Senate Concurrent Resolution No. 4009 — Support of Regional Airport Authorities With Montana. This resolution expresses the support of the Legislative Assembly for the establishment of regional airport authorities serving cities along the Montana-North Dakota border. (Political Subdivisions "A" Committee)

Senate Concurrent Resolution No. 4010 — Garrison Diversion — First and Highest Priority for Water Development. This resolution designates the construction and completion of the federally authorized and funded Garrison Diversion Unit as having the first and highest priority for water development in North Dakota. (Water Committee)

HOUSE BILL SUMMARIES

House Bill No. 1042 — Administrative Code Distribution. This bill increases from two to four the number of sets of the North Dakota Administrative Code the Legislative Council receives from the Secretary of State. (Administrative Rules Committee)

House Bill No. 1043 — Beginning Farmer Programs. This bill requires beginning farmer applicants to participate in an approved educational program, establishes a beginning farmer eligibility advisory board, establishes the interest rate for loans made under the beginning farmer revolving loan fund, allows personal property loan guarantees under the beginning farmer loan guarantee program, and appropriates $20 million to the beginning farmer revolving loan fund. (Agriculture Committee)

House Bill No. 1044 — Land Use Ordinance Vote Requirement. This bill lowers the vote requirement for passage of a land use ordinance by a soil conservation district from three-fourths of the voters voting in the referendum on the ordinance to two-thirds of the voters. (Agriculture Committee)

House Bill No. 1045 — Annual Report Identifying North Dakota's Outstanding Indebtedness. This bill requires the State Auditor to prepare an annual report identifying all outstanding bonds and evidences of indebtedness of the state. (Budget "B" Committee)

House Bill No. 1046 — Repeal of Obsolete Bonding Programs. This bill repeals laws relating to these obsolete bonding programs: irrigation development debentures, North Dakota mill and elevator bonds, and North Dakota mill and elevator refunding bonds. (Budget "B" Committee)

House Bill No. 1047 — Ownership of Treatment and Care Centers for Developmentally Disabled Persons. This bill allows profit corporations to own and operate treatment or care facilities for developmentally disabled persons. (Budget "C" Committee)

House Bill No. 1048 — Foundation Aid and Special Education Payments. This bill increases the per-pupil foundation aid payments to $1,525 for the 1985-86 school year and $1,595 for the 1986-87 school year. The bill also amends the special education reimbursement formula to provide reimbursement in an amount equal to 60 percent of the salary and fringe benefit costs paid the previous year by school districts for personnel employed to deliver special education instructional services. (Education "A" Committee)

House Bill No. 1049 — School Transportation Payments. This bill eliminates the current school transportation payment formula and replaces it with a block grant payment to reimburse school districts for 85 percent of their transportation costs. (Education "A" Committee)

House Bill No. 1050 — School District Mill Levy Authority. This bill permits school districts which have taxable valuation that has increased 20 percent or more over a one-year period and which would as a result of the 20-mill equalization deduct receive less in state foundation aid payments to levy for two years without a vote any number of mills necessary to offset the foundation aid payments that would otherwise be lost. (Education "A" Committee)

House Bill No. 1051 — Partnerships in Educational Excellence Program. This bill establishes a partnerships in educational excellence program to provide state payments to school districts that send representatives to attend educational excellence conferences sponsored by the Superintendent of Public Instruction and then plan and implement a local educational excellence program approved by the Superintendent of Public Instruction. (Education "A" Committee)

House Bill No. 1052 — Length of School Term. This bill increases the minimum school term by five days with a local school board option of using three of those extra days for inservice education training. (Education "B" Committee)

House Bill No. 1053 — Area Service Agency Pilot Program. This bill implements an area service agency pilot program for delivery of educational and administrative services. The bill also requires a plan be established for the eventual transfer of all county superintendents of schools' duties to area service agencies by January 1, 1989. (Education "B" Committee)

House Bill No. 1054 — Election Officials Appointment and Compensation. This bill provides for the appointment of election inspectors and election judges and for the compensation of all election officials. (Elections Committee)

House Bill No. 1055 — Appointment of Election Inspectors. This bill provides for the appointment of election inspectors for four years. (Elections Committee)

House Bill No. 1056 — Election Supplies and Training Sessions. This bill provides that the delivery of election supplies and the training sessions for election workers may not be more than 15 days before an election. (Elections Committee)

House Bill No. 1057 — Referendum and Initiative Petition Form. This bill provides a more detailed form for referendum and initiative petitions. (Elections Committee)

House Bill No. 1058 — Notarized Signature Forms for Referendum or Initiative Petition. This bill allows a sponsoring committee for a referendum or initiative petition to use separate notarized signature forms when seeking approval of the petition. (Elections Committee)

House Bill No. 1059 — Uniformity of Term "Qualified Elector". This bill defines the term "qualified elector" for petition purposes and inserts the term in the laws in lieu of such words as elector, people, legal voter, voter, bona fide elector, electorate, person, eligible voter, signer, and citizen. (Elections Committee)

House Bill No. 1060 — Appointment of Public Administrator. This bill removes the requirement that a county elect a public administrator and authorizes the county judge to appoint someone to that office. (Elections Committee)

House Bill No. 1061 — Tax Exemption for Coal Gasification Byproducts. This bill provides that the byproducts of the coal gasification process are exempt from the gross receipts tax imposed upon operators of coal gasification facilities. The bill requires annual byproduct production reports to the Department of Health. (Energy Development Committee)

House Bill No. 1062 — Administrative Control of Grafton State School and San Haven. This bill transfers administrative control of the Grafton State School and San Haven from the Director of Institutions to the Department of Human Services, effective July 1, 1989. (Government Reorganization Committee)

House Bill No. 1063 — State Licensure of Hospice

Programs. This bill provides for the licensure of hospice programs by the State Department of Health. (Industry, Business and Labor Committee)

House Bill No. 1064 — Collateral Source Setoff. This bill provides for the admissibility at trial of evidence relating to payments received from collateral sources, and the discretionary deduction of some or all of such payments by the trier of fact from damages awarded to successful medical malpractice plaintiffs. (Industry, Business and Labor Committee)

House Bill No. 1065 — Medical Malpractice Respondents in Discovery. This bill provides that medical malpractice plaintiffs may use evidentiary discovery procedures against individuals who are not defendants, by designating them as respondents in discovery. (Industry, Business and Labor Committee)

House Bill No. 1066 — Voluntary Service or Partial Payment of Medical Malpractice Claims. This bill clarifies and expands present law concerning the provision of voluntary services or partial payment of a claim without admission of guilt in medical malpractice suits. (Industry, Business and Labor Committee)

House Bill No. 1067 — Charitable Exceptions to Corporate Farming Prohibition. This bill allows certain nonprofit charities to own farmland or ranchland only as long as the land is essential to the charitable mission. The bill requires divestiture of land acquired after December 31, 1984. The bill also allows industrial and business concerns to own farmland or ranchland if that land is necessary for the business purpose, but requires land not actually used for the business be rented to farmers. (Judiciary "A" Committee)

House Bill No. 1068 — Certain Corporations Prohibited From Membership in Partnership Farms. This bill prohibits a corporation from being a partner in a partnership farm unless the corporation is a qualified family farm corporation under the corporate farming law. (Judiciary "A" Committee)

House Bill No. 1069 — Weapons Statutes. This bill repeals the entire weapons title of the North Dakota Century Code and enacts a new weapons title. (Judiciary "B" Committee)

House Bill No. 1070 — Noncriminal Game and Fish Offenses. This bill makes a number of the less serious offenses in the game and fish laws noncriminal offenses and provides a system for paying fees which is similar to that used for noncriminal traffic offenses. (Judiciary "B" Committee)

House Bill No. 1071 — Suspension of Hunting and Fishing License. This bill provides that a judge may suspend a defendant's license for criminal and noncriminal convictions of the game and fish laws and allows the court to require the defendant to take a hunter instruction course before the defendant can obtain a new license. (Judiciary "B" Committee)

House Bill No. 1072 — Bad Check Laws. This bill removes the provisions in the misdemeanor and felony bad check laws which provide that payment of the check within 10 days after the defendant receives a notice of dishonor of the check is a defense. (Judiciary "B" Committee)

House Bill No. 1073 — Vacancy in Office of District or County Judge or Supreme Court Justice. This bill provides that vacancies in the office of district or county judge or Supreme Court justice must be filled according to the requirements of the laws concerning the respective judicial nominating committee. (Judiciary "B" Committee)

House Bill No. 1074 — Qualifications of Notaries Public. This bill removes the requirement that a notary public be a citizen of the United States. (Judiciary "B" Committee)

House Bill No. 1075 — Voter Assistance Due to a Disability of an Elector. This bill provides that any elector who cannot read or who has a disability may, when voting, receive assistance of any person of the elector's choice except the elector's employer, officer, or agent of the elector's union, or a candidate on the ballot or certain of the candidate's relatives. (Judiciary "B" Committee)

ty Assessment Funds. This bill provides for agricultural commodity groups to retain 80 percent of the interest earned on their commodity assessment funds, with the remaining 20 percent used to pay for services provided to the commodity groups by the state. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1077 — Dakota Interstate Low-Level Radioactive Waste Compact. This bill provides for this state to enter into, with South Dakota, the Dakota Interstate Low-Level Radioactive Waste Compact. (Natural Resources Committee)

House Bill No. 1078 — Rocky Mountain Interstate Compact on Low-Level Radioactive Waste. This bill provides for this state to enter into the Rocky Mountain Interstate Compact on Low-Level Radioactive Waste. (Natural Resources Committee)

House Bill No. 1079 — Waterfowl Production Areas and Refuges. This bill requires gubernatorial consent for each proposed acquisition by the federal govenment of watefowl refuges or production areas; eliminates the requirement of an affirmative recommendation from the board of county commissioners before the Governor may approve the acquisition; eliminates the provision that, if the Department of the Interior fails to comply with the law relating to negotiations of provisions of waterfowl production area easement agreements, North Dakota's consent to the acquisition of migratory bird conservation by the federal government is nullified; and repeals the law that provides that land acquired by the Game and Fish Department qualifies as mitigated acres for the Garrison Diversion Project. (Natural Resources Committee)

House Bill No. 1080 — Mobile Home Landlord-Tenant Relations. This bill regulates the landlord-tenant relationship in mobile home parks. The bill also allows cities and counties to adopt local ordinances regulating mobile home park landlord-tenant relationships. (Political Subdivisions "A" Committee)

House Bill No. 1081 — Mobile Home Taxation. This bill allows owners of mobile homes to pay the property tax on the mobile home after the property tax year. (Political Subdivisions "A" Committee)

House Bill No. 1082 — Land Use Planning and Zoning. This bill revises and consolidates the law relating to the land use and planning regulatory authority of counties, cities, and townships. (Political Subdivisions "A" Committee)

House Bill No. 1083 — County Home Rule. This bill allows counties to adopt and be governed by a home rule charter. (Political Subdivisions "B" Committee)

House Bill No. 1084 — Highway Patrolmen's Retirement System Contributions. This bill increases the state contribution to the Highway Patrolmen's Retirement System by seven percent to a total of 19 percent of covered compensation. (Retirement Committee)

House Bill No. 1085 — Highway Patrolmen's Retirement System Benefits and Contributions. This bill eliminates the maximum salary limitations of the

Highway Patrolmen's Retirement System and increases the state contribution under that system to 17.7 percent of compensation and increases the employee contribution rate to 10.3 percent of compensation. (Retirement Committee)

House Bill No. 1086 — Alternate Firemen's Relief Association Benefit Reduction. This bill allows the boards of trustees of alternate firemen's relief association retirement programs to reduce benefits based on actuarial recommendations to ensure the continued solvency of retirement funds. (Retirement Committee)

House Bill No. 1087 — Coal Impact Loans Before Actual Mining. This bill allows the Board of University and School Lands to provide coal impact loans in advance of actual coal mining. (Tenneco Plant Committee)

House Bill No. 1088 — Oil Extraction Tax Allocation to Resources Trust Fund. This bill increases from 10 to 15 percent the allocation of the oil extraction tax revenue to the resources trust fund and increases the uses for which the resources trust fund may be used from "comprehensive water supply facilities" to "water-related projects" engaged in by the Water Commission. (Water Committee)

House Bill No. 1089 — Transfer to Resources Trust Fund. This bill returns to the resources trust fund the $11.7 million transferred by the 1983 Legislative Assembly from the resources trust fund for use at the Grafton State School. (Water Committee)

House Bill No. 1090 — Procedure For Water Project Funding From Resources Trust Fund. This bill requires political subdivisions and rural water systems seeking funding from the resources trust fund for water projects to submit the proposed project to the Water Commission for review and recommendation to the Legislative Assembly. (Water Committee)

House Concurrent Resolution No. 3001 — Administrative Agency Procedures Study. This resolution directs the Legislative Council to review the statutes outside of the Administrative Agencies Practice Act to determine their necessity due to the rulemaking authority and the right of appeal provided by that Act. (Administrative Rules Committee)

House Concurrent Resolution No. 3002 — Farmers Home Administration Programs and Personnel. This resolution urges Congress to review the Farmers Home Administration's limited resource loan programs and urges Congress to provide additional personnel for the Farmers Home Administration. (Agriculture Committee)

House Concurrent Resolution No. 3003 — Executive Branch Article. This resolution creates a new executive branch article for the constitution, to take effect on July 1, 1987. (Judiciary "B" Committee)

House Concurrent Resolution No. 3004 — Bad Check Laws Study. This resolution directs the Legislative Council to study the state's misdemeanor and felony bad check laws. (Judiciary "B" Committee)

House Concurrent Resolution No. 3005 — Wildlife Refuge Revenue Sharing Act Payments in Lieu of Taxes. This resolution urges Congress to appropriate sufficient moneys to pay 100 percent of the payment in lieu of taxes entitlements to counties in this state under the Wildlife Refuge Revenue Sharing Act. (Natural Resources Committee)

House Concurrent Resolution No. 3006 — Public Employees Retirement Committee Jurisdiction Over Fringe Benefits Study. This resolution directs the Legislative Council to study the feasibility and desirability of increasing the jurisdiction of the Committee on Public Employees Retirement Programs to include all fringe benefit programs for state employees. (Retirement Committee)

House Concurrent Resolution No. 3007 — Public Employee Retirement Programs Consolidation Study. This resolution directs the Legislative Council to study the feasibility and desirability of consolidating public employee retirement programs into a single state retirement system. (Retirement Committee)

House Concurrent Resolution No. 3008 — Public Employee Retirement Mandatory Reporting and Evaluation Standards Study. This resolution directs the Legislative Council to study the feasibility and desirability of imposing mandatory reporting requirements and evaluation standards on all public employee retirement programs. (Retirement Committee)

House Concurrent Resolution No. 3009 — Political Subdivision Employee Retirement Study. This resolution directs the Legislative Council to study the actuarial and financial soundness of public employee retirement programs of political subdivisions. (Retirement Committee)

House Concurrent Resolution No. 3010 — Alternate Firemen's Relief Association Retirement Study. This resolution directs the Legislative Council to study the actuarial and financial soundness of the alternate firemen's relief association retirement programs. (Retirement Committee)

House Concurrent Resolution No. 3011 — Public Employee Prefunded Retirement Health Care Study. This resolution directs the Legislative Council to study the feasibility and desirability of establishing a prefunded retirement health care plan for retired public employees under the state uniform group insurance plan. (Retirement Committee)