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# **SUMMARY**

## **BRIEFLY — THIS REPORT SAYS**

### **ADMINISTRATIVE RULES COMMITTEE**

The Council reviewed all state administrative agency rulemaking actions from November 1990 through October 1992. The Council formally objected to the rules of five administrative agencies and informally objected to action taken by three administrative agencies as related to the agency's rules. The Council reviewed the procedures for distribution of administrative agency proposed rulemaking notices and determined that the charge for providing the filings should be \$50 annually. The Council also approved the fee schedules for medical and hospital services proposed for adoption by the Workers Compensation Bureau, approved extensions of time allowed administrative agencies to adopt the rules pursuant to North Dakota Century Code (NDCC) Section 28-32-02, and received notice of appeals of administrative agencies rulemaking action pursuant to NDCC Section 28-32-15.

The Council reviewed the definition of administrative agency in NDCC Section 28-32-01 and recommends Senate Bill No. 2023 to amend that section to remove the exemptions from the definition of administrative agency. The Council studied the impact of various child support guideline models on family units, on the quality of relationships among the persons in the families affected by the guidelines, and on children who receive child support. The Council recommends House Bill No. 1021 to establish child support guidelines that incorporate a modified income shares model.

### **ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS**

The Advisory Commission on Intergovernmental Relations administered a program of local government efficiency planning grants under 1991 Senate Bill No. 2346. The commission awarded local government efficiency planning grants to 15 grant applicants. The total amount awarded in grants was \$198,558.34. The commission makes no recommendation with regard to continuation of the grant program.

The commission studied property tax levy authority of political subdivisions. The commission recommends Senate Bill No. 2024 to allow taxing districts the option of using previous levies in dollars as the basis to determine current levy limitations. Senate Bill No. 2024 is effective for the 1993 and 1994 tax years and allows taxing districts to levy up to four percent more for a budget year than was levied in dollars in the base year.

The commission studied joint or cooperative action of political subdivisions under existing law. The commission makes no recommendation for changes in state law regarding cooperative agreements among political subdivisions.

### **BUDGET SECTION**

The Council received status reports of the state general fund for the 1991-93 biennium and a June 1992 revised revenue forecast for the 1991-93 biennium.

The Council received reports on the enhanced audit program, the state's oil tax collections, 1991-93 federal funds available to state government, the receipt and expenditure of funds approved by the Emergency Commission, the Department of Human Services' deficiency appropriation to be requested of the 1993 Legislative Assembly due to the decreased federal financial participation rate, funds received and spent by the North Dakota National Guard on the construction of the Veterans Cemetery, and the performance of the Department of Economic Development and Finance.

The Council approved the nonresident tuition rates set by the State Board of Higher Education, the University of North Dakota's request to spend \$19.6 million of private, federal, and other funds to construct an addition to the Energy and Environmental Research Center and an Institute for Agricultural Health Sciences and Rural Medicine, the comprehensive land acquisition plan of the Game and Fish Department, two land acquisitions by the Game and Fish Department, the organizational structure of the Department of Economic Development and Finance, the substitution of alternative positions for authorized positions within the Department of Economic Development and Finance, transfers of appropriation authority among the various divisions of the Depart-

ment of Human Services, and transfer of appropriation authority among the various divisions of the Office of Management and Budget.

Budget Section members, along with the Budget Committee on Government Administration and the Budget Committee on Government Services, visited major state agencies and institutions to evaluate requests for major improvements and structures and to discuss problems of the institutions.

#### **BUDGET COMMITTEE ON GOVERNMENT ADMINISTRATION**

The Council studied state employee pay practices. The Council recommends House Bill No. 1022 to appropriate \$50,000 to provide state employees opportunities for job skills enhancement, access to new technologies, and career development programs. The Council recommends Senate Bill No. 2025 to require the director of the Central Personnel Division to develop a comprehensive plan for the recruitment, career development, and retention of state employees. In addition, the Council recommends Senate Concurrent Resolution No. 4001 to express legislative support for state employees and urge each branch of state government to give priority to the recruitment, training, and retention of valuable state employees.

The Council studied consolidating the Board of Higher Education motor pools with the Department of Transportation's central vehicle management system. The Council recommends that the North Dakota University System and the central vehicle management system cooperate to provide for maximum and efficient use of motor pool resources.

The Council received and accepted the reports of the Central Personnel Division on its progress in implementing the state's pay equity policy and in determining necessary pay equity adjustments.

The Council reviewed the status of major state agency and institution appropriations. The review focused on revenues, expenditures, and utility expenditures of the higher education, charitable, and penal institutions, the appropriations for the foundation aid program, and the appropriations to the Department of Human Services for aid to families with dependent children and medical assistance. In addition, the Council monitored agency compliance with legislative intent included in the 1991-93 appropriations.

The Council reviewed alternatives for fuel price risk management contracts and oil and gas tax revenue risk management contracts. The Council recommends House Bill No. 1023 to authorize the Office of Management and Budget to contract for fuel price risk management on behalf of a state agency or institution that purchases fuel. House Bill No. 1023 also authorizes the State Investment Board, upon request from the Office of Management and Budget and approval by the Budget Section, to contract for oil and gas tax revenue risk management.

#### **BUDGET COMMITTEE ON GOVERNMENT SERVICES**

The Council monitored the continued development of services for the mentally ill and chemically dependent, including expanded community services and related changes in the role of the State Hospital. The Council recommends Senate Concurrent Resolution No. 4002 to direct the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, expanded community services, and the development of partnerships between the public and private sectors for providing alcohol and drug abuse treatment services. The Council supports a proposed program that allows individuals with a dual diagnosis of severe mental illness and chemical dependency to live in individual apartments while individualized support services are provided to them by the regional human services centers.

The Council studied additional programs that could be implemented by the State Hospital and alternative uses for the facilities of the State Hospital. The Council supports the development of a residential rehabilitation unit for chronic alcoholics at the State Hospital and encourages the Appropriations Committees to consider the funding request for the unit for the 1993-95 biennium. The Council recommends House Bill No. 1024 to allow court-ordered treatment services for repeat DWI offenders in any licensed addiction treatment program. The Council also recommends House Bill No. 1025 to permit the Developmental Center at Grafton to sell services subject to Budget Section approval.

The Council studied privatization of state government services, including the potential for further contracting with the private sector for the treatment of

alcohol and drug dependent persons. The Council recommends House Bill No. 1026 to require each agency to submit a report to the Senate and House Appropriations Committees regarding privatization of public services.

The Council studied child care services provided by state agencies and institutions. The Council recommends Senate Bill No. 2026 to exempt leases of space for child care facilities at the State Hospital or Developmental Center at Grafton from the requirement that the leases must result in a net economic gain for the Department of Human Services. The Council recommends Senate Bill No. 2027 to allow state agencies or institutions to provide child care services to children of employees, students, or clients of the agency or institution and, if space is available, to any other children.

The Council studied the North Dakota child care financing system and ways the state can maximize the use of federal funds available for child care services. The Council recommends Senate Bill No. 2028 to establish a child care service fee of up to \$25 on child care providers providing care to children whose families receive state child care assistance. The Council recommends Senate Bill No. 2029 to require the Superintendent of Public Instruction, Department of Human Services, and Department of Transportation to provide assistance to school districts developing or providing before and after school child care services. The Council recommends Senate Bill No. 2030 to require that a licensed child care facility must maintain at all times during which child care services are provided at least one person who is trained and certified in cardiopulmonary resuscitation. The Council also recommends that the Department of Human Services' child care reimbursement levels for federal child care assistance programs be increased, that the Department of Human Services use federal social services block grant funding to pay for the preparation and distribution of a quarterly newsletter, and that the Superintendent of Public Instruction encourage all for-profit child care centers that have at least 25 percent enrollees who are eligible for public assistance to apply for assistance under the federal child nutrition program.

#### **BUDGET COMMITTEE ON HUMAN SERVICES**

The Council studied the state level administration of the human services delivery system. The Council recommends Senate Concurrent Resolution No. 4003, encouraging the Department of Human Services to continue the development of a total quality management initiative expected to assist the department in addressing many of the recommendations made to the Council and directing the Council to monitor the department's progress in developing total quality management concepts, including receiving information on the human service areas affected by total quality management and the related costs and benefits of total quality management.

In addition, the Council recommends Senate Concurrent Resolution No. 4004, encouraging the Department of Human Services to implement recommended changes to improve the administrative structure of the Department of Human Services to provide quality and efficiency in the human service delivery system and to report to the Council on the progress in implementing the recommendations.

The Council studied the impact of the Americans with Disabilities Act on state and local governments. The Council recommends House Bill No. 1027 to provide state statute compatibility with the Americans with Disabilities Act. The Council also recommends House Bill No. 1028 to establish a program to provide specialized telecommunications services and equipment to the communications impaired and to provide for a telephone excise tax to fund the program.

The Council studied the distribution of child support enforcement incentive payments received by the state from the federal government. The Council recommends Senate Bill No. 2031 to allocate one percent of the total federal child support incentive payments to a child support incentive account to be used as grants for child support related education and training for individuals involved in child support enforcement.

The Council monitored the Department of Human Services' continued implementation of federal Family Support and Medicare Catastrophic Coverage Acts and their effect on human service programs.

#### **BUDGET COMMITTEE ON LONG-TERM CARE**

The Council studied the feasibility and desirability of establishing a state basic care program. The Council recommends three bills containing total 1993-

95 biennium general fund appropriations of \$7,570,499: House Bill No. 1029 to establish a program to provide a special needs supplement of up to \$50 per month for the private purchase of housekeeping services by a projected 602 vulnerable aged, blind, or disabled persons, at a biennial cost of \$716,704; House Bill No. 1030 to provide for an expanded service payment program for the elderly and disabled to provide in-home services as an alternative to persons meeting criteria for basic care and projected to serve 278 individuals at a biennial cost of \$1,615,021, and to establish a state basic care assistance program providing state funding and administration of the program with counties conducting related functional assessments and estimated to serve 425 individuals at a biennial cost of \$5,238,774; and House Bill No. 1031 to allow basic care facilities to provide medication administration services and to admit and retain only individuals for whom the facility provides appropriate services to meet the individual's needs.

The Council received reports from the Department of Human Services advisory committee studying the medical assistance property cost reimbursement system for nursing homes in North Dakota. The Council recommends House Bill No. 1032 to continue the reimbursement provisions of House Bill No. 1031 (1991) which are to expire on June 30, 1993, changing nursing home property cost reimbursement for certain facilities by requiring interest and depreciation to be reimbursed based on the facility's actual costs. In addition, the bill continues the Department of Human Services advisory committee's study of property cost reimbursement during the 1993-94 interim and requires the advisory committee to report to a committee of the Legislative Council regarding the advisory committee's findings.

#### **COURT SERVICES COMMITTEE**

The Council studied the problems associated with unification of the state's judicial system into a one-level trial system and reviewed and monitored the implementation of 1991 House Bill No. 1517. The Council received the results of a survey by the State Court Administrator's office concerning the fiscal implications of House Bill No. 1517. The Council recommends Senate Bill No. 2032 to provide that the authority of the Supreme Court to abolish the office of district court judges under NDCC Section 27-05-02.1(2) may be exercised from July 1, 1999, until December 31, 2000, if on January 1, 1999, the number of district court judges is more than 42 rather than the 44 presently in the law; Senate Bill No. 2033 to provide that, effective January 2, 1995, not more than 70 percent of the chambers of the district judges may be located in cities with a population of more than 10,000; and Senate Bill No. 2034 to provide that the judgeships that will be established on January 2, 1995, under 1991 House Bill No. 1517 are interim district court judgeships with the same jurisdiction as district court judges except the interim district court judge does not have jurisdiction to hear and determine any case or proceeding relating to an offense classified as a Class AA felony. The Council also recommends Senate Concurrent Resolution No. 4005 to direct the Legislative Council to study any problems associated with court unification under 1991 House Bill No. 1517, including the funding of the court unification.

#### **EDUCATION COMMITTEE**

The Council studied the feasibility of implementing an education funding formula based on costs and current education finance litigation in this state. The Council recommends House Bill No. 1033 to provide that any unobligated moneys in the school building fund may be considered cash on hand for budgeting purposes during the ensuing year; House Bill No. 1034 to allow school districts the use of moneys in a school building fund for the payment of certain insurance premiums; Senate Bill No. 2035 to provide an \$8 million appropriation for the purpose of making foundation aid per-pupil payments for the period beginning January 1, 1993, and ending June 30, 1993, and to impose a one percent sales tax on all items currently taxed at five percent for the period required to raise \$8 million; and Senate Bill No. 2036 to provide that in determining the total amount of payments due a school district for per-pupil and transportation aid, the amount of per-pupil aid and transportation aid for which a school district is eligible must be added together, and from that total there must be subtracted the product of 22 mills times the latest available net assessed and equalized valuation of property in the school district and the amount that the unobligated



balance of a school district's interim fund on the preceding June 30 is in excess of the amount authorized by NDCC Section 57-15-27.

### **EMPLOYEE BENEFITS PROGRAMS COMMITTEE**

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

The Council studied the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement. The Council recommends House Bill No. 1035 to extend the establishment of the State Retirement and Investment Office for a period of two years, until June 30, 1995.

The Council reviewed the determination of the Public Employees Retirement System Board concerning the effectiveness of 1991 Session Laws Chapter 632, which would have, if effective, increased the benefit multiplier for service credit, prior service credit, and retiree benefits and allowed normal retirement under a rule of 88.

The Council reviewed the management of the state health plan by the Public Employees Retirement System Board.

### **FINANCE AND TAXATION COMMITTEE**

The Council studied the farm buildings property tax exemption. The Council recommended House Bill No. 1615, which was passed by the 52nd Legislative Assembly meeting in special session in November 1991, to provide that the property tax exemption for farm buildings does not apply to any building located on platted land within city limits or located on railroad operating property.

The Council studied all property tax exemptions allowed by law, the manner in which tax-exempt entities acquire and hold real property, the effect of such acquisition and ownership on local tax bases, and the feasibility of eliminating or limiting property tax exemptions. The Council recommends Senate Bill No. 2037 to prohibit any entity from acquiring agricultural property interests in North Dakota for wildlife habitat or conservation purposes unless that entity has made all payments of taxes or payments in lieu of taxes on property owned by that entity for all prior years. The bill requires any entity owning property used for wildlife habitat or conservation purposes to have made payments of taxes or payments in lieu of taxes equal to 100 percent of the taxes that were or would have been due against that property under local assessment and levies for the previous two taxable years. The Council recommends Senate Concurrent Resolution No. 4006 to urge Congress to assure that the federal government assumes its fair share of the property tax burden on land under federal ownership.

The Council studied but makes no recommendation regarding funding of the wetlands tax credit.

The Council studied the method of providing and determining state aid to local fire departments and districts. The Council recommends House Bill No. 1036 to remove the cap on property and casualty insurance premium tax revenues deposited in the insurance tax distribution fund and to adjust the distribution formula so that the amount of premium taxes collected in each fire district is distributed to that district. The Council recommends House Bill No. 1037 to provide that an insurer may not issue or renew a policy for property or casualty insurance after December 31, 1993, unless the application identifies each fire district in which insured property is located.

### **GARRISON DIVERSION OVERVIEW COMMITTEE**

The Council received briefings on the progress of litigation surrounding the Garrison Diversion Unit Project and project updates from representatives of the Garrison Diversion Conservancy District, State Water Commission, and the United States Bureau of Reclamation.

### **HEALTH CARE COMMITTEE**

The Council studied the need for and feasibility of adopting and implementing a state health policy for the purpose of providing basic medical and health care to all citizens of the state and the feasibility and ramifications of adopting and implementing a state-subsidized health insurance program for uninsured and

underinsured residents of the state. The Council recommends Senate Bill No. 2038 to appropriate \$11 million to establish a program to provide health services to children through the age of 18 years and pregnant women. The Council recommends Senate Bill No. 2039 to prohibit certain financial arrangements between health care providers and health care service providers. The Council recommends House Bill No. 1038 to require the Health Task Force to develop an all payers ratesetting system or other health care financing system and to develop a mechanism to provide health care for all citizens of the state. The Council recommends House Concurrent Resolution No. 3001 to support the efforts of the North Dakota Health Task Force in developing an all payers ratesetting system or other health care financing system and in developing a mechanism to provide health care for all citizens of the state.

The Council studied the availability of capital to North Dakota hospitals and the role of the Bank of North Dakota in assuring that capital is available at the lowest possible cost. The Council makes no recommendation as a result of this study.

The Council received reports from the Commissioner of Insurance relating to basic health insurance coverage offered pursuant to 1991 Session Laws Chapter 319.

#### **HIGHER EDUCATION COMMITTEE**

The Council reviewed major initiatives implemented by the Board of Higher Education in accordance with the goals of the board's seven-year plan. The Council reviewed the updated seven-year plan and discussed issues relating to higher education.

#### **HUMAN SERVICES FACILITIES ADVISORY COMMITTEE**

The Council reviewed the lease between the Department of Human Services and the Red River Human Services Foundation for office space to house the Southeast Human Service Center in light of 1991 House Bill No. 1511, which allowed the Department of Human Services to terminate the lease and purchase an existing building or construct a new facility to house the center.

The department was unable to negotiate a new lease with the foundation. The Council reviewed the final four proposals under consideration by the Southeast Human Service Center's Building Committee. The Council expresses support for the Southeast Human Service Center's Building Committee's space needs study and encourages the Department of Human Services, in conjunction with the Industrial Commission, to continue the process to its conclusion.

#### **INDUSTRY, BUSINESS AND LABOR COMMITTEE**

The Council studied the collocation of the Bank of North Dakota and the Department of Economic Development and Finance. The Council makes no recommendation concerning the collocation of the Department of Economic Development and Finance and the Bank of North Dakota.

The Council studied the feasibility and desirability of consolidating the Workers Compensation Bureau with Job Service North Dakota, the amount required to implement any consolidation, and administration of the Workers Compensation Bureau, including the qualifications of the bureau's claims analysts and the rehabilitation staff. The Council recommends Senate Bill No. 2040 to amend the statute of limitations for workers' compensation claims to reflect that the statute of limitations would not begin to run until an injured employee knew and was informed by the employee's treating health care provider that the employee's work activities were a substantial contributing factor in the development of a work-related injury or disease. The Council recommends House Bill No. 1039 to repeal the provisions of 1991 Session Laws Chapter 714 which require the consolidation of the Workers Compensation Bureau with Job Service North Dakota. The Council recommends House Bill No. 1040 to repeal the provisions of 1991 Session Laws Chapter 714 which require the consolidation of the Workers Compensation Bureau with Job Service North Dakota and to require that the Workers Compensation Bureau and Job Service North Dakota be established as divisions under the Commissioner of Labor. The bill provides that the Commissioner of Labor be appointed by the Governor rather than elected.

The Council studied the feasibility of providing basic statewide health and work-related accident insurance to all North Dakota workers and their dependents. The Council makes no recommendation as a result of this study.

The Council studied workers' compensation, insurance, and contract issues that may arise when an employer or an insurer requires subrogation, additional insured coverage, or indemnification of an employee or contractor. The Council makes no recommendation as a result of this study.

### **JUDICIARY COMMITTEE**

The Council studied the investigation, prosecution, and treatment of offenders and victims in child and developmentally disabled sex abuse cases. The Council recommends Senate Bill No. 2041 to permit a guardian ad litem to be appointed for a developmentally disabled victim in a sex offense case and require the Attorney General to pay the fees of all guardians ad litem appointed in sex offense cases; Senate Bill No. 2042 to consolidate the sex offender and crimes against children offender registration statute and provide that all statements, fingerprints, and photographs required to be submitted by an offender are public records; and Senate Bill No. 2043 to create the affirmative defense of consent in sex offense cases involving victims with a mental disease or defect and provide procedures that must be followed or the consent of the sex offense victim may not be raised by the defendant if the victim suffers from a mental disease or defect.

The Council studied charitable gaming and makes no recommendation for legislative action.

The Council reviewed proposed amendments to uniform Acts recommended by the North Dakota Commission on Uniform State Laws. The Council recommends Senate Bill No. 2044 to amend the Uniform Statutory Rule Against Perpetuities; Senate Bill No. 2045 to amend the Uniform Rights of the Terminally Ill Act to permit an individual to allow another person to make life-sustaining treatment decisions for the individual; House Bill No. 1041 to repeal Uniform Commercial Code Article 6 - Bulk Transfers; House Bill No. 1042 to amend Uniform Commercial Code Article 3 - Negotiable Instruments concerning lost, destroyed, or stolen checks; and House Bill No. 1043 to amend the Uniform Transfers to Minors Act to allow brokerage accounts to be used to set up custodianships for minors. The Council also recommends that the North Dakota Commission on Uniform State Laws revise the amendments of the Uniform Probate Code Revised Article II to incorporate suggestions from the Probate and Trust Section of the State Bar Association of North Dakota and introduce the revised amendments in the 1993 Legislative Assembly.

The Council makes two recommendations as a result of its statutory revision responsibilities. The Council recommends House Bill No. 1044 to require a court to provide as a condition of probation that the defendant be prohibited from possessing a firearm or destructive device while on probation and House Bill No. 1045 to make technical corrections to the North Dakota Century Code.

### **LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE**

The Council accepted 183 audit reports prepared by the State Auditor's office and independent accounting firms.

The Council received reports on the performance audits of the Workers Compensation Bureau, Department of Human Services, State Fleet Services, and state leasing and maintenance contracts. The Council recommends that the State Auditor's office report on these audits during the 1993 legislative session. The Council recommends Senate Bill No. 1046 to transfer boiler inspection duties from the Workers Compensation Bureau to the Insurance Commissioner. The Council recommends Senate Bill No. 1047 to transfer the crime victims reparations program from the Workers Compensation Bureau to the Parole and Probation Division of the Department of Corrections and Rehabilitation.

The Council received the Comprehensive Annual Financial Reports for the years ended June 30, 1990, and June 30, 1991. The State Auditor issued an unqualified opinion on the June 30, 1991, audited Comprehensive Annual Financial Report. The Council recommends that the June 30, 1992, audited Comprehensive Annual Financial Report be made available during the 1993 legislative session.

The Council accepted the annual report of accounts receivable written off at the State Hospital, the Developmental Center at Grafton, and the human service centers and received the state's outstanding indebtedness report as of June 30, 1991.

The Council recommends House Bill No. 1048 to remove the Lieutenant Governor as a member of the Legislative Audit and Fiscal Review Committee and the Budget Section.

The Council expresses its expectation that the State Auditor's office and private accounting firms report severance pay violations under NDCC Section 54-14-04.3. The Council discourages the Board of Higher Education from granting tenure to administrative personnel.

#### **LEGISLATIVE MANAGMENT COMMITTEE**

The Council reviewed legislative rules and makes a number of recommendations intended to clarify the rules and expedite the legislative process. Among the recommended rules changes are: (1) require every measure with a fiscal note indicating an impact of at least \$50,000 to be rereferred to the Appropriations Committees; (2) require fiscal notes to state impact in dollar amounts and to identify the effect on an appropriation for the current, upcoming, and next succeeding bienniums; (3) require a recorded roll call vote on the final disposition of any resolution providing for the expenditure of money; (4) require the presiding officer to refer an amended returned measure to the chairman of the standing committee that reported the measure to the original house; (5) allow up to six legislators to sponsor measures; (6) redesignate the State and Federal Government Committees as the Government and Veterans Affairs Committees and place matters affecting government pensions and benefits and veterans affairs in those committees, and redesignate the Human Services and Veterans Affairs Committees as the Human Services Committees; (7) provide for automatic rereferral of measures that are properly the subject of rereferral to the Appropriations Committees; (8) provide the procedure to follow in determining the order of considering divided committee reports; and (9) provide that only one member is required to remove an item from the consent calendar.

The Council recommends House Bill No. 1049 to provide that a bill or resolution passed by the Senate and House of Representatives as evidenced by the journals of the Senate and House is presumed to be the bill or resolution signed by the presiding officers, presented to the Governor, and filed with the Secretary of State. Basically, this recommendation is that the judicially recognized journal entry rule be statutorily adopted in North Dakota.

The Council expanded the Legislators' Automated Work Station system for use during the 1993 session and approved arrangements for the session. Among the changes in session arrangements, the Council determined that bill summaries will no longer be prepared for the Legislative Assembly, all resolutions will receive four-digit numbers, and a telecommunications device for the deaf will be installed on an incoming WATS line during the session and in the Legislative Council office during the interim.

The Council reviewed the legislative information services available from the Legislative Assembly and the Legislative Council and established fees based on the cost of printing or mailing various legislative documents.

The Council supervised the continuing renovation of the legislative wing of the State Capitol and recommends that the legislative leadership authorize the use of the Pioneer Room by the State Tax Department as of April 1 of odd-numbered years.

#### **LEGISLATIVE REDISTRICTING AND ELECTIONS COMMITTEE**

The Council studied legislative reapportionment and the development of a legislative reapportionment plan or plans for use in the 1993 primary election. The Council recommended Senate Bill No. 2597 (1991), which provided for the establishment of a 49-district legislative redistricting plan; Senate Bill No. 2598 (1991), which provided an alternative 49-district legislative redistricting plan; and Senate Bill No. 2599, which allowed the Governor to call a special election to be held in 30 to 50 days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan. The 1991 Legislative Assembly at a special session in November 1991 adopted Senate Bill No. 2597 and Senate Bill No. 2599.

The Council studied plans for subdistricts for the House of Representatives. The Council recommends House Bill No. 1050 to establish House subdistricts within each Senate district, except in Districts 18, 19, 38, and 40, which are districts that contain portions of the Air Force bases; House Concurrent Resolution No. 3002 to propose a constitutional amendment to change the term of office of members of the House of Representatives from two years to four years; Senate Concurrent Resolution No. 4007 to propose a constitutional amendment to allow the Legislative Assembly to shorten the term of any senator before completion of the term or provide for the election of any senator for a term of two years when

necessary to maintain staggered terms after redistricting of the Legislative Assembly; and House Bill No. 1051 to provide that the number of signatures necessary for a candidate for a legislative office to place that candidate's name on the primary election ballot is equal to at least one percent of the total resident population of the legislative district and the number of signatures required for a candidate to place that candidate's name on the general election ballot as an independent candidate is equal to at least two percent of the resident population of the district.

The Council studied North Dakota election laws, including the laws relating to the financing of election campaigns and the reporting of election campaign expenditures. The Council recommends Senate Bill No. 2046 to change the filing deadlines for campaign contribution reports by political committees to conform to deadlines established under federal law for federal candidates and political committees and require preelection and supplemental contribution statements; Senate Bill No. 2047 to require a candidate to report all contributions from political committees, all loans made to the candidate, all contributions exceeding \$100 in the aggregate for the calendar year and the total value of all contributions received and to require district committees of political parties, state political party committees, and political committees to file contribution statements; and House Bill No. 1052 to allow a person who ceases to be a candidate to return a contribution to the contributor or use unexpended contributions as a contribution to any candidate or political party or as a donation to any charitable or educational organization.

#### **NATURAL RESOURCES COMMITTEE**

The Council studied the priority of water rights and North Dakota's water permitting process. The Council recommends House Bill No. 1053 to require persons applying for water permits to notify all persons holding water permits for the appropriation of water from sites located within a radius of one mile from the location of the proposed water appropriation site and all municipal or public use water facilities in the county in which the proposed water appropriation site is located.

The Council studied the methods that could be used to fund and finance critical water projects and programs, including construction of facilities.

The Council studied the establishment of a comprehensive statewide water development program and investigated the funding and financing of this program.

The Council studied the effects of compliance with the federal Safe Drinking Water Act on North Dakota and its communities. The Council recommends that North Dakota retain primacy for administration and enforcement of the Safe Drinking Water Act. The Council recommends Senate Concurrent Resolution No. 4008 to urge Congress to moderate enforcement of the Safe Drinking Water Act.

The Council studied the feasibility and desirability of adopting an integrated pest management law. The Council recommends House Bill No. 1054 to allow county weed boards to control pests as well as weeds.

The Council received information concerning the federal farm programs and received annual reports from the Land Reclamation Research Center.

#### **REGULATORY REFORM REVIEW COMMISSION**

The Regulatory Reform Review Commission reviewed the operation and effect of the Telecommunications Regulatory Reform Act.

#### **SPECIAL EDUCATION COMMITTEE**

The Council studied the North Dakota early childhood tracking system. The Council recommends House Concurrent Resolution No. 3003 to urge state agencies to work together and maximize available resources in order to assist young at-risk children and their families. The Council also recommends House Concurrent Resolution No. 3004 to direct the Legislative Council to study the progress of the North Dakota early childhood tracking system, the need for further expansion of the program, and the continuation of funding through federal or other sources. The Council studied family foster home fire and safety codes. The Council recommends Senate Bill No. 2048 to require each foster parent to undergo fire prevention training and to complete a self-declaration form, and to authorize the Department of Human Services to require, on a case-by-case basis, an inspection of the heating system, the electrical system, and any

other type of inspection the department deems necessary.

The Council studied all aspects of special education, including financial support. The Council recommends House Concurrent Resolution No. 3005 to direct the Legislative Council to study the delivery of services to special needs children from a multiagency perspective; House Concurrent Resolution No. 3006 to direct the Legislative Council to study the implementation of an individualized education program process not otherwise mandated by law; House Concurrent Resolution No. 3007 to urge the Board of Higher Education to include in the teacher preparation curriculum training designed to prepare new teachers for the challenges of educating the next generation and to encourage the Board of Higher Education to work with the North Dakota Education Association and the Superintendent of Public Instruction to ensure that certificated teachers, through continuing education, enhance their academic and pedagogical skills for the same purpose; Senate Concurrent Resolution No. 4009 to urge the Superintendent of Public Instruction to include the provision of performance-based services for children from kindergarten through grade 12 as a standard for the accreditation of public and private schools; House Bill No. 1055 to provide that a child's school district of residence and the admitting district must be notified by a placement agency of the need for an out-of-district placement or admission, and that the school district of residence must be afforded an opportunity to participate in any process involving decisions about the child's placement; and House Bill No. 1056 to allow a child who has not turned five by August 31 in the year of enrollment to demonstrate through a series of tests readiness to enter kindergarten and which also allows a child who has not turned six by midnight on August 31 in the year of admission to demonstrate through a series of tests readiness to enter first grade.

#### **WASTE MANAGEMENT COMMITTEE**

The Council studied the use of recycled materials by state agencies and institutions. The Council recommends Senate Bill No. 2049 to require the Governor to appoint a committee to assess the ability of each state agency and institution to reduce the amount of solid waste it generates and increase the amount of recycled products it uses.

The Council studied the problems and benefits associated with waste management, including the operation and effect of legislation relating to waste management, whether the Department of Health and Consolidated Laboratories is the appropriate state agency for waste management, and the effect of establishing district and state waste management plans. The Council recommends House Bill No. 1057 to provide that each solid waste management district board must include a representative of each city in the district which has a population of more than 10,000, to allow solid waste management districts to inspect municipal waste management facilities within the district, to extend the maximum term of a solid waste management facility or solid waste transporter permit from five years to 10 years, and to require an applicant for a solid waste management facility to provide written notice of the application to the solid waste management district board of the district in which the facility is to be located and require a public meeting to be held regarding the permit application; Senate Bill No. 2050 to require the Department of Health and Consolidated Laboratories to employ at least one full-time inspector for each waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal waste; and House Concurrent Resolution No. 3008 to direct the Legislative Council to study the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans.

The Council studied the effects of various methods of solid waste disposal and of solid waste disposal facilities, with emphasis on the disposal of ash resulting from the incineration of municipal solid waste. The Council recommends House Bill No. 1057 to extend the moratorium on permit applications for landfills in which ash resulting from the incineration of municipal solid waste is disposed until January 1, 1994, or until the effective date of rules adopted by the Department of Health and Consolidated Laboratories to regulate those facilities, whichever is earlier.

The Council studied the feasibility and ramifications of reducing the ground

**pollution of North Dakota landfills, with an emphasis on encouraging recycling efforts to preserve and protect our land and water. The Council recommends Senate Bill No. 2051 to provide a sales tax exemption for recycling equipment used in a new recycling facility or in a physical or economic expansion of an existing recycling facility.**

# **REPORT**

*of the*

## **NORTH DAKOTA LEGISLATIVE COUNCIL**

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



**FIFTY-THIRD LEGISLATIVE ASSEMBLY**  
**1993**



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# North Dakota Legislative Council

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State Senator  
Chairman

**JOHN D. OLSRUD**  
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Assistant Director

**CHESTER E. NELSON, Jr.**  
Legislative Budget  
Analyst & Auditor

**KATHERINE  
CHESTER VER WEYST**  
Code Revisor

January 5, 1993

Honorable Edward T. Schafer  
Governor of North Dakota

Members, 53rd Legislative  
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations of 22 interim committees, the Advisory Commission on Intergovernmental Relations, and the Regulatory Reform Review Commission to the 53rd Legislative Assembly.

Major recommendations include proposals to establish a health plan for children and pregnant women; provide changes in state law to comply with the Americans with Disabilities Act; provide for House subdistricts within each Senate district; provide for a deficiency appropriation for foundation aid to schools with a temporary tax to pay for it; provide for changes in statutes to make it easier to prosecute sex crimes against developmentally disabled victims; provide for expanded service payments to the elderly and disabled to provide in-home services; establish a state basic care assistance program; require that the Workers Compensation Bureau and Job Service North Dakota become divisions under the Commissioner of Labor; provide for child care services by state agencies; establish child support guidelines based on a modified income shares model; provide for payments by those who accept certain hazardous waste to pay the cost of inspection; and require consideration of privatization by state agencies.

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

Respectfully submitted,

Senator Corliss Mushik  
Chairman, North Dakota  
Legislative Council

CM/RAM

# HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

## I. HISTORY OF THE LEGISLATIVE COUNCIL

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

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

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

## II. THE NEED FOR A LEGISLATIVE SERVICE AGENCY

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

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

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

## III. COMPOSITION OF THE COUNCIL

The Legislative Council by statute consists of 15 legislators, including the majority and minority leaders of both houses and the Speaker of the House. The

Speaker appoints five other representatives, two from the majority and three from the minority as recommended by the majority and minority leaders, respectively. The Lieutenant Governor, as President of the Senate, appoints three senators from the majority and two from the minority as recommended by the majority and minority leaders, respectively.

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

## IV. FUNCTIONS AND METHODS OF OPERATION OF THE COUNCIL

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

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

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

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

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



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

## **V. MAJOR PAST PROJECTS OF THE COUNCIL**

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

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

The review of uniform and model acts, such as the

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

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

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

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, health care, property tax levies, and legislative rules.

# ADMINISTRATIVE RULES COMMITTEE

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

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

The committee may make rules change recommendations to the adopting agency, formally object to an agency rule, and make recommendations to the Legislative Council for the amendment or repeal of enabling legislation serving as authority for the rules. Section 65-02-08 also requires that fee schedules for medical and hospital services proposed for adoption by the Workers Compensation Bureau be submitted to and approved by the committee.

In addition, the Legislative Council delegated to the committee the Council's authority to approve extensions of time allowed administrative agencies to adopt rules pursuant to NDCC Section 28-32-02, to establish a procedure to distribute copies of administrative agency filings of notice of proposed rulemaking, and to receive notice of appeal of an administrative agency's rulemaking action pursuant to NDCC Section 28-32-15. The Legislative Council also assigned the committee the study directed by Section 24 of 1991 Session Laws Chapter 29, which called for a study of the impact of various child support guideline models on family units, on the quality of the relationships among the persons in the families affected by the guidelines, and on children who receive child support.

Committee members were Representatives Ben Tollefson (Chairman), Jeff W. Delzer, John Dorso, Steve Gorman, and Lyle L. Hanson, and Senators Jim Dotzenrod, Orlin Hanson, Joe Keller, Curtis Peterson, and Jens Tennesfos.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## ADMINISTRATIVE AGENCY RULES REVIEW

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

The committee's review authority is statutorily

limited to rules assigned to the committee by the Legislative Council chairman. At the committee's request, the Legislative Council chairman assigned to the committee all rules published in the Administrative Code effective after October 1990 and all written complaints received by the committee concerning proposed or adopted rules. 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 through 1991 Legislative Assemblies.
2. Whether the rules resulted from federal programs or are related in subject matter to any federal statute or regulation.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has filed any complaint concerning these rules.
5. Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rule is expected to have an impact on the regulated community in excess of \$50,000, and whether a regulatory analysis was issued. (Beginning in October 1992)
6. The approximate cost of giving public notice and holding any hearing on the rules, and the approximate cost of staff time used in developing the rules.
7. An explanation of the subject matter of the rules and the reasons for adopting those rules.

Each agency was also asked, beginning in October 1992, to provide the committee with a copy of any regulatory analysis.

## Review of Current Rulemaking

The committee reviewed 3,079 rule changes from November 1990 through October 1992. Table A tabulates the rule changes published in the Administrative Code and reviewed by the committee. The tabulation depicts the number of rules amended, created, superseded, repealed, reserved, or redesignated. The most important qualification of the tabulation is that each rule is viewed as one unit, although rules differ in length and complexity. This tabulation includes tables, appendices, and some organization rules.

Although the agencies' methods of reporting made it difficult to determine the exact number of rules resulting from a particular Legislative Assembly's action or from federal statute or regulation, most of the changes made as a result of legislative action were due to 1991 Legislative Assembly changes or federal statutes. It appears agencies are becoming much more current in adoption of rules.

North Dakota Century Code Section 28-32-02 requires that any rule change made to implement a statutory change must be adopted within nine months of the effective date of the statutory change. Pursuant to the committee's authority to grant extensions of

that time period, the committee granted extensions to the Commissioner of Agriculture, Board of Nursing, Office of Management and Budget, Department of Health and Consolidated Laboratories, Department of Human Services, Agricultural Products Utilization Commission, and the Public Employees Retirement System for periods ranging from three months to six months. Eighteen extensions for periods ranging from four months to one year were requested and granted by the committee last interim.

North Dakota Century Code Section 65-02-08 provides that all fees on claims for legal, medical, and hospital services rendered under Title 65 to any claimant must be in accordance with a schedule of fees adopted or to be adopted by the Workers Compensation Bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee before submission to the Legislative Council for publication. Pursuant to this responsibility, the committee approved the medical and hospital fee schedule presented to the committee by the bureau.

Pursuant to North Dakota Century Code Section 28-32-15, on January 15, 1992, a notice of appeal to NDAC Section 92-01-02-26(2) relating to binding arbitration rules of the Workers Compensation Bureau was filed with the Legislative Council. Appellants contended that the rule is inconsistent with and goes beyond the authority of NDCC Section 65-07-17, in that the Legislative Assembly provided a claimant with an absolute right to choose the binding arbitration dispute resolution process and the bureau's rule provides an employer veto authority over a claimant's request to utilize arbitration to settle disputes. The appellants asked that NDAC 92-01-02-26(2) be declared invalid as not in accordance with the law.

### **Formal Objections**

The committee may object to all or any portion of a rule if the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency. The filed objection must contain a concise statement of the committee's reasons for its action. The objection must be published in the next issue of the code supplement. Within 14 days after the filing of a committee objection to a rule, the adopting agency is to respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection. After the filing of the committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court is to declare the whole or portion of the rule objected to invalid and judgment is to be rendered against the agency for court costs.

### **Department of Human Services - Child Support Guidelines**

Since 1983 the Department of Human Services has been required by NDCC Section 14-09-09.7 to establish a scale of suggested minimum contributions for child support. The 1989 Legislative Assembly amended the law to require the adoption of guidelines

by the department and to provide a rebuttable presumption that the guidelines provide for the correct amount of child support. The scale of minimum contributions established in 1983 and amended in 1987 was not established through the rulemaking process. In *Huber v. Jahner* (Sept. 1990) the North Dakota Court of Appeals ruled the guidelines invalid because as substantive rules they should have been adopted in accordance with NDCC Chapter 28-32.

On January 5, 1990, the department initially proposed to adopt child support guidelines as administrative rules. The department requested public comments. On February 9, 1990, the department conducted a public hearing concerning the proposed rules.

The comments received at the February 9 hearing, and the written comments received before and during that hearing, generally opposed the proposed rules. During this period, the interim Administrative Rules Committee members also received public comments opposing the proposed rules. After review of those comments, the department determined that the rules originally proposed would be withdrawn.

The department began drafting guidelines based on the "income shares" model. During the course of development of that model, the department solicited comments from the Juvenile Procedures Committee, a committee established by the North Dakota Supreme Court. Committee members recommended that an income shares model not be established.

The department then developed the "obligor" model. The obligor model bears some resemblance to the then existing guidelines, but incorporated many suggestions made with respect to the withdrawn rules.

On September 26, 1990, the department proposed rules in the alternative. The two alternatives were the income shares model, developed early in 1990, and the obligor model, developed after receiving comments from the Juvenile Procedures Committee. The department's proposals were widely disseminated. The proposed child support guidelines became the subject of wide debate. The department received 138 written or oral comments. The department specifically asked persons who commented to indicate whether they preferred the income shares model or the obligor model. The expressed preferences were almost equally divided, with most of the attorneys and judges who offered comment preferring the obligor model. The reasons given were varied, but most were concerned about the additional judicial and legal time that would be required to develop and consider financial information about two persons, rather than one person.

The department opted to adopt the proposed rules for the obligor model. The rules became effective February 1, 1991. The department's stated reasons for adopting the obligor model over the income shares model included the department's opinion that because the income shares model was more complex it would increase litigation costs, lead to more requests for review, and be more difficult to use in emergency cases and that the income shares model appeared more fair but in most cases made little or no difference in award amounts.

In July 1991 the committee reviewed the department's rules. At that meeting the committee

by motion objected to the child support rules and the following objection was filed in the Legislative Council office on August 9, 1991:

**THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 75-02-04.1 RELATING TO CHILD SUPPORT GUIDELINES.**

The committee objects to this rule because:

1. Both parents have a legal duty to support their children.
2. Any guidelines adopted to ensure proper child support amounts are paid upon divorce must be based on the best interests of the child.
3. The obligor model adopted by the Department of Human Services establishes child support amounts by using a percentage of the obligor's income and does not take into consideration the income of the custodial parent.
4. The income shares model considered, but not adopted, by the department combines the income of both parents and requires the parties to contribute child support in proportion to the income each receives.
5. Public opinion expressed by the parties directly affected (the parents) strongly supports the income shares model over the obligor model because of the inherent fairness of that proposal. The best interests of the child should be better served by adoption of the income shares model as it would provide not only sufficient financial resources for the child but should provide for more harmonious relationships due to the fairness of the income shares model.

A letter containing a copy of the objection was sent to the Department of Human Services on August 9, 1991, and the objection was published with the rule in the Administrative Code. On August 21, 1991, the department informed the committee by letter that it did not intend to make any changes to the rule it had adopted. This decision was based on:

1. The department has full legal authority to establish child support guidelines, and is required by statute to do so.
2. The rules objected to were adopted pursuant to law, i.e. the department complied with all procedural requirements.
3. The rules objected to represent a fully considered choice after hearing and reflecting on comments on those rules, both pro and con.
4. The rules objected to took effect in February 1991. The then-sitting Fifty-second Legislative Assembly thereafter failed to pass House Bill No. 1428, which would have required the department to adopt rules encompassing the "income shares" model for child support guidelines.
5. Had the department taken action after the legislative session to changes its rules to reflect the "income shares" model it would have been contrary to the legislative action on House Bill No. 1428.
6. The department cannot now implement child support guidelines that require consideration of

the obligor's income because current law makes provision for securing information concerning the income of the obligor, but not for securing information concerning the income of the obligee.

7. The first four items set out in the committee's objection are true, but not determinative in any sense as to the propriety of the department's action in adopting the rules.
8. The department would debate the committee's rationale in item 5 regarding public opinion because the rulemaking record reflects an expression of support for the adopted rules which is virtually even with that for the income shares model.
9. The child support guidelines are a part of an overall system of child support collection which is intended to ensure that children's needs are met, and that the state's fiscal outlays for aid to families with dependent children are minimized.

Committee members objected to the department using the defeat of 1991 House Bill No. 1498 to support the department's adoption of guidelines based on the noncustodial parent's income because the bill may not have been defeated in the first place if the department had not opposed the bill before the Senate committee. The committee decided to leave the objection in place and to address the committee's concerns with the rules during the committee's study.

**Public Service Commission - Electric Utility Power Purchase**

Effective May 1, 1991, the Public Service Commission amended NDAC Section 69-09-07-09 relating to the rates that electric utilities must pay for power purchased from qualifying facilities.

In July 1991 the committee reviewed the rule. At that meeting the committee by motion objected to the amendment of Section 69-09-07-09 and the following objection was filed in the Legislative Council office on August 9, 1991:

**THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO CHANGES TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 69-09-07-09 ADOPTED BY THE PUBLIC SERVICE COMMISSION EFFECTIVE MAY 1991 RELATING TO THE RATES THAT ELECTRIC UTILITIES MUST PAY FOR POWER PURCHASED FROM QUALIFYING FACILITIES.**

The committee objects to this rule because:

1. North Dakota Administrative Code Section 69-09-07-09 establishes rates that investor-owned utilities must pay for power purchased from qualified facilities and requires net energy billing.
2. 1991 Senate Bill No. 2463, which would have required net energy billing for sales involving investor-owned utilities and rural cooperatives, failed to pass the Senate on a vote of 6 to 43.
3. It is clearly a violation of legislative intent for the Public Service Commission to adopt rules requiring net energy billing by investor-owned utilities when the 1991 Legislative Assembly defeated a bill that would have required the same.

A letter containing a copy of the objection was sent to the Public Service Commission on August 9, 1991, and the objection was published with the rule in the Administrative Code. On August 27, 1991, the commission responded to the committee's objection by letter:

We respectfully suggest that the amended rule does not violate legislative intent and, at minimal cost, will help safeguard North Dakota's economic future.

Senate Bill No. 2463 and House Bill No. 1550 differ greatly from our amended rule. We did not support SB 2463 or HB 1550, nor do we support the provisions contained in the bills. The bills would have statutorily imposed net billing on both the Rural Electric Cooperatives and the investor-owned utilities. The RECs say net billing would have a significant economic effect on them. The investor-owned utilities testified that the rule would have only a minimal effect on them. Ratemaking by statute is not desirable and lacks the flexibility to respond to problems and changing conditions. In addition, to some extent the bills would have given us jurisdiction over REC rates. We do not seek or support PSC jurisdiction over REC rates.

Our rule originated with a complaint filed with us in 1988. The complaint led to an investigation and a rulemaking proceeding. We held three hearings and requested an Attorney General's opinion prior to the 1991 Legislative Session. Our proceeding was nearly complete when these bills were introduced.

As noted, our rule would apply only to the investor-owned utilities that operate in other states which also use net billing. While the Rural Electric Cooperatives testified against the bills, the legislative history shows that the investor-owned utilities did not.

Congressional proposals to deal with a "global warming" are one of the greatest threats to North Dakota's economic future. These proposals threaten our lignite industry, coal-fired electrical generation, and the coal gasification plant. As with the recent federal Clean Air Act, our ability to secure reasonable treatment for North Dakota depends on our ability to show Congress and the Administration North Dakota's good faith efforts to deal with the area of concern. This rule is a low-cost way to project our good faith efforts.

We hope you will concur with our analysis and withdraw your objections. If you do not, we will begin the process to repeal the rule.

The committee did not withdraw its objection and the commission has not repealed the rule.

### **Job Service North Dakota - Unemployment Compensation Taxation Exemption**

Effective January 1, 1991, Job Service North Dakota adopted NDAC Section 27-02-14-01 relating to the interpretation of the ABC test, which deals with exempting services by independent contractors from unemployment compensation taxation. In July 1991 the committee reviewed the rule. At that meeting the committee by motion objected to the adoption of Section 27-02-14-01 and the following objection was

filed in the Legislative Council office on August 9, 1991:

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 27-02-14-01 RELATING TO THE INTERPRETATION OF THE ABC TEST WHICH DEALS WITH EXEMPTING SERVICES BY INDEPENDENT CONTRACTORS FROM UNEMPLOYMENT COMPENSATION TAXATION.

The committee objects to this rule because:

1. Prior to the 1991 Legislative Session NDCC Section 52-01-01(17)(e) provided for the use of the ABC test to determine if an independent contractor was exempt for unemployment compensation purposes.
2. House Bill No. 1378, adopted by the 1991 Legislative Assembly and effective July 17, 1991, replaced the ABC test with the common law test for determining independent contractor status.
3. A representative of Job Service North Dakota testifying before the committee said the agency is in the process of revising North Dakota Administrative Code Section 27-02-14-01 to incorporate the new test. He said, however, Job Service North Dakota would apply the old rule to service performed prior to the effective date of the legislation and the new rule to service performed after the effective date.
4. Adoption of House Bill No. 1378 clearly indicates the Legislative Assembly intends that the common law test, not the ABC test, be used to determine independent contractor status for unemployment compensation purposes and that it is unfair and contrary to legislative intent for Job Service North Dakota to apply the ABC test to cases in which the service was provided prior to the effective date of the legislation.

A letter containing a copy of the objection was sent to Job Service North Dakota on August 9, 1991, and the objection was published with the rule in the Administrative Code. On August 23, 1991, Job Service informed the committee by letter of its reasons for not making further changes to the rule. The agency response read:

The purpose of Section 27-02-14-01 was to clarify the interpretation of the "ABC Test" provided for in the North Dakota Unemployment Compensation Law at NDCC § 52-01-01(17)(e). As you know, the "ABC Test" deals with exemption of "services" from unemployment compensation coverage by independent contractors.

The "ABC Test" was placed into the law by the 1985 Legislative Assembly. Administrative Rule 27-02-14-01, defining the "ABC Test" was adopted in response to a complaint received approximately two years ago concerning the lack of a rule for defining the "ABC Test". Public notice of the proposed adoption of Administrative Rule 27-02-14-01 was given in the ten major daily newspapers in North Dakota during the last two weeks of August 1990. A public hearing was held in Bis-

marck on September 20, 1990. On November 5, 1990, an Attorney General's opinion was issued establishing the legality of Administrative Rule 27-02-14-01. This rule, defining the "ABC Test", was then published in the North Dakota Administrative Code, becoming effective January 1, 1991.

While House Bill No. 1378, changing the "ABC Test" to the common law test, was enacted by the 1991 Legislative Assembly, it did not become effective until July 17, 1991. The history of Administrative Rule 27-02-14-01, set forth above, clearly indicates that this rule, defining the "ABC Test" was promulgated and adopted prior to the enactment of House Bill No. 1378.

NDCC § 52-01-01(17)(e) contains the very clear reference point of "Services performed" for both the "ABC Test" under prior law and for the common law test under current law, Job Service has consistently applied this law section on the basis of the time when the services were performed. This principle was followed in 1985 when the Legislature changed the test from the common law test to the "ABC Test".

Consequently, Job Service maintains that it has acted correctly in applying the "ABC Test" law and rule for cases where the "services" were performed prior to July 17, 1991. Job Service is also implementing the provisions of House Bill No. 1378 correctly by applying it in all cases involving "service performed" subsequent to the July 17, 1991, effective date.

The committee did not withdraw its objection. Job Service amended Section 27-02-14-01 effective May 1, 1992, to remove the provision relating to the ABC test and replace it with a provision relating to the common law test.

### **Game and Fish Department - Equipment Violation**

Effective June 1, 1991, the Game and Fish Department amended NDAC Section 30-03-01-06 to establish a penalty of \$250 for failure of vendors to maintain adequate equipment for maintaining live bait.

In July 1991 the committee reviewed the rule. At that meeting the committee by motion objected to the amendment to Section 30-03-01-06 and the following objection was filed in the Legislative Council office on August 9, 1991:

**THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO THAT PART OF NORTH DAKOTA ADMINISTRATIVE CODE SECTION 30-03-01-06 THAT ESTABLISHES A PENALTY OF \$250 FOR AN EQUIPMENT VIOLATION.**

The committee objects to this rule because:

1. Vendors must use appropriate equipment for maintaining live bait.
2. If that equipment is not adequate to maintain the bait in a healthy and lively condition, it is unlikely that customers will continue to buy the bait.
3. The appropriate penalty for inadequate equipment violations would be loss of the business due to an inferior product. Therefore, the \$250 fine is excessive and probably unnecessary.

A letter containing a copy of the objection was sent to the Game and Fish Department on August 9, 1991, and the objection was published with the rule in the Administrative Code. On August 19, 1991, the department informed the committee by letter of its reasons for supporting the amendment:

The Committee's main objection to this rule change was that "If equipment is not adequate to maintain the bait in a healthy condition, it is unlikely that customers will continue to buy the bait." This philosophy allows customers to learn the hard way, that is by wasting their money on poor quality bait. The Department's intent in this instance is to protect customers before they have a bad experience. Customers in some fishing areas often are not local people. They travel only occasionally to the fishing area and purchase bait there. They usually do not know who has good bait and who does not.

The Department's intent was to protect customers before they had bad experiences. The \$250 fine is a good incentive for a bait vendor to either operate efficiently or get out of the bait business. This certainly can happen as the result of customers who stop purchasing bait at a business. The Department's inspection and threat of a fine could result in this happening more quickly with fewer dissatisfied customers. We anticipate that this fine seldom, if ever, will be used. The inspection followed by a 30 day period for correction of problems, along with the possibility of a fine and loss of the vendor's license, strongly encourages the bait dealer to improve their operation.

Inadequate equipment that would lead to an unhealthy group of bait fish increases the chances that fish diseases will be spread to our fishing waters. The bait in tanks is already under an unnatural condition in that they are crowded and subject to disease organisms. This stress can be reduced by having the correct equipment and water flow in a facility. Disease outbreak is a very real threat to the bait and potentially the lake where the bait is used. Since we serve the angling public of North Dakota, we feel it is in the best interest of our fisheries to reduce any risk factors we can.

A compromise on this issue is possible. It was thought that \$250 would be the best amount to use. The Department would have to inspect a facility at least twice and do a lot of paperwork before a fine is imposed. This effort by the State certainly could justify a \$250 fine. This would be high enough incentive to discourage delays in correcting problems. A smaller amount such as \$150 or \$200 would probably be almost as effective. The Game and Fish Department does not get the money paid for fines or penalties.

Attached is a copy of the Century Code sections related to fines and getting the fine reduced or waived. There is a procedure to do this. There is also a procedure to contest whether there was a violation or not. The section concerning that hearing procedure is also attached.

Prior to this rule change violations of this rule were Class B Misdemeanors. The maximum penalty for Class B Misdemeanors is 30 days of imprisonment, a fine of \$500, or both. Judges seldom levy

the maximum, but they do impose court costs and attorney fees may have to be paid. There are no court costs or attorney fees involved in a noncriminal violation such as this bait vendor rule. A \$50 fine from a judge handling a criminal violation actually costs the individual much more in attorney fees and court costs.

Upon review of the department's letter at the committee's November 7, 1991, meeting, the committee passed a motion to send a letter to the Game and Fish Department requesting the department to amend Section 30-03-01-06 to provide for a penalty of \$100. The appropriate letter was sent to the department on November 21, 1991. The department, however, has made no change to the section.

### **Tax Commissioner - Various Tax Rules**

The Tax Commissioner made changes effective in June and November of 1992 to NDAC Chapters 81-01.1-02, 81-02.1-02, 81-03-01.1, 81-03-04, 81-03-05.1, 81-03-09, 81-09-02, 81-09-03, and 81-11-01. In October 1992 the committee reviewed the rules. At that meeting the committee by motion objected to the June and November 1992 rules of the commissioner and the following objection was filed in the Legislative Council office on November 4, 1992:

**THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO THE JUNE AND NOVEMBER 1992 RULE CHANGES OF THE TAX COMMISSIONER.**

The committee objects to these rules because:

1. North Dakota Century Code Section 28-32-02.2 requires an agency proposing a rule to issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of \$50,000.
2. The Tax Commissioner has refused to issue a regulatory analysis not because the rules will not have an impact of over \$50,000 but because the Tax Commissioner maintains that the rules relate only to the administration of revenue laws and do not impact any regulated community.
3. The Committee on Administrative Rules maintains that the Tax Commissioner is subject to the regulatory analysis requirements of Chapter 28-32 and that the rules may have an economic impact on the regulated community in excess of \$50,000.
4. The June and November 1992 rule changes have not been legally adopted because the regulatory analysis was not issued.
5. The absence of the regulatory analysis made it impossible for the committee to properly review the rules.

A letter containing a copy of the objection was sent to the Tax Commissioner on November 4, 1992, and the objection will be published with the rules in the Administrative Code. At the time of preparation of this report no response had been received from the Tax Commissioner.

### **Informal Objections**

#### **Office of Management and Budget - Personnel Practices**

Effective September 1, 1992, the Office of Management and Budget adopted NDAC Chapters 4-07-03 through 4-07-35 relating to personnel practices. In October 1992 the committee members reviewed the rules and expressed concern that not all county commissioners were informed of the rule changes prior to their adoption even though a number of county employees were affected by the rules. A representative of the Office of Management and Budget testified that all Chapter 28-32 notice requirements were followed and that the Association of Counties and county employees affected were notified of the rule changes.

Pursuant to NDCC Section 54-35-02.6, the committee may make recommendations to an adopting agency concerning rule changes. The committee passed the following motion:

**THAT THE LEGISLATIVE COUNCIL STAFF BE REQUESTED TO SEND A LETTER TO THE OFFICE OF MANAGEMENT AND BUDGET INDICATING THAT THE COMMITTEE OBJECTS TO THE FACT THAT THE OFFICE APPLIED THE SEPTEMBER 1992 PERSONNEL RULES TO THE COUNTIES WITHOUT NOTIFICATION TO ALL COUNTY COMMISSIONERS; REQUESTS THAT THE OFFICE OF MANAGEMENT AND BUDGET INFORM THE COUNTY COMMISSIONERS OF THESE RULES; AND REQUESTS THAT THE OFFICE OF MANAGEMENT AND BUDGET REPORT TO THE COMMITTEE CONCERNING THESE RULES AT THE COMMITTEE'S NEXT MEETING.**

The appropriate letter was sent to the Office of Management and Budget on November 4, 1992. At the time of preparation of this report no response had been received from the Office of Management and Budget.

#### **Board of Nursing - Nurse Assistants**

Effective November 1, 1992, the Board of Nursing adopted NDAC Article 54-07 relating to nurse assistants. In October 1992 the committee reviewed the rules. Committee members expressed concern that the rules would have an impact of more than \$50,000 upon a regulated community; however, the board had not issued a regulatory analysis as required by law. A representative of the board said there were two basic costs in the rules—a \$5 per person registration fee covering 2,000 people for a total of \$10,000 and an unknown cost for training.

Pursuant to NDCC Section 54-35-02.6, the committee may make recommendations to an adopting agency concerning rule changes. The committee passed the following motion:

**THAT COMMITTEE COUNSEL SEND A LETTER TO THE BOARD OF NURSING INDICATING THAT THE COMMITTEE DISAPPROVES OF THE RULES RELATING TO NURSE ASSISTANTS BEING ISSUED WITHOUT A REGULATORY ANALYSIS; REQUESTS THAT A REGULATORY ANALYSIS BE DONE ON THE RULES; AND REQUESTS THAT THE BOARD REPORT TO THE COMMITTEE AT THE COMMITTEE'S NEXT MEETING.**

The appropriate letter was sent to the Board of Nursing on November 4, 1992. At the time of preparation of this report no response had been received from the board.

### **Department of Human Services - Medicaid Benefits and Refinancing Incentives**

Effective in August and November 1992, the Department of Human Services amended NDAC Chapter 75-02-02.1 relating to Medicaid benefits and Chapter 75-02-06 relating to refinancing incentives and resident personal funds.

In October 1992 the committee reviewed the rules. Committee members expressed concern that a copy of the regulatory analysis had not accompanied the statement of the representative of the department even though the representative indicated the analysis had been issued on the rules.

Pursuant to NDCC Section 54-35-02.6, the Administrative Rules Committee may make recommendations to an adopting agency concerning rule changes. The committee passed the following motion:

THAT COMMITTEE COUNSEL SEND A LETTER TO THE DEPARTMENT OF HUMAN SERVICES INDICATING THAT THE COMMITTEE DISAPPROVES OF THE RULES RELATING TO ELIGIBILITY FOR MEDICAID AND REFINANCING INCENTIVES AND RESIDENT PERSONAL FUNDS BEING SUBMITTED TO THE COMMITTEE WITHOUT THE ACCOMPANYING REGULATORY ANALYSIS; REQUESTS THAT THE DEPARTMENT PROVIDE THE COMMITTEE WITH COPIES OF THE REGULATORY ANALYSIS; AND REQUESTS THAT THE DEPARTMENT AGAIN REPORT TO THE COMMITTEE CONCERNING THESE RULES AT THE COMMITTEE'S NEXT MEETING.

The appropriate letter was sent to the Department of Human Services on November 4, 1992. A representative of the department distributed a copy of the regulatory analysis to the committee at its October 1992 meeting before its adjournment.

### **Board of Occupational Therapy Practice - Occupational Therapy Practice**

Effective November 1, 1992, the Board of Occupational Therapy Practice adopted NDAC Article 55.5-03 relating to the practice of occupational therapy. In October 1992 the committee reviewed the rules and heard testimony from physical therapists in opposition to these rules. The physical therapists argued that the rules allowed occupational therapists to perform physical agent modalities that should only be performed by a physical therapist. The committee concluded that the rules had been legally adopted, that arguments presented were really a turf battle, and that any further action should be taken by the Legislative Assembly rather than by the committee.

### **ADMINISTRATIVE AGENCIES PRACTICE ACT**

#### **Proposed Rulemaking Notice**

North Dakota Century Code Section 28-32-02 requires that an agency's notice of proposed rulemaking must be filed with the office of the Legislative Council and published at least twice in each daily newspaper

of general circulation published in this state. The Legislative Council is required to establish a procedure whereby any person may request and receive mailed copies of all filings made by the agencies and the Council may charge for providing copies of the filings. Notice filed on or before the last calendar day of the preceding month must be mailed by the Legislative Council on or before the fifth business day of each month. The Legislative Council assigned the duty to establish a charge for this service to the Administrative Rules Committee. The committee determined that the charge for providing copies of the filings would continue to be \$50 annually.

### **Attorney General Legal Opinion**

A representative of the Greater North Dakota Association testified concerning the failure on the part of many administrative agencies to follow legal requirements relating to sending hearing notices to the Legislative Council, meeting time requirements for comment periods, and issuing a regulatory analysis when proposed rules have more than a \$50,000 impact on the regulated industry. The committee requested that a letter be sent to the Attorney General expressing the committee's opinion that administrative agency rules should not be approved as to legality by the Attorney General unless they have been adopted pursuant to the requirements of NDAC Chapter 28-32. The committee also added a question concerning whether a regulatory analysis had been issued to the letter sent to administrative agencies summarizing what should be in the agencies' testimony before the committee concerning those agencies' rules.

In response to the letter sent to the Attorney General, the Attorney General said he did not agree that he is required to include the requested items in his review for legality but he did agree to include within the office's review of proposed rules a review of the notice of proposed adoption, amendment, or repeal of the rule, the publication of that notice, the filing of that notice with the office of the Legislative Council, and whether a regulatory analysis has been issued if requested. The Attorney General has sent a checklist to the agencies that includes the items the agencies must provide to the Attorney General before receiving approval for legality.

### **Administrative Agency Definition**

North Dakota Century Code Chapter 28-32 contains the Administrative Agencies Practice Act. The chapter provides for administrative agency rulemaking, hearing, and appeal procedures.

Before 1981, Section 28-32-01(1) defined administrative agency as including:

[A]ny officer, board, commission, bureau, department, or tribunal other than a court, having statewide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state.

Therefore, a four-prong test was used to determine whether an agency was an "administrative agency" and thus was subject to Chapter 28-32:

1. The agency had to have statewide jurisdiction.



2. The agency had to have authority to make a determination.
3. The determination had to have the effect of law.
4. The determination by statute was subject to review in the courts of this state.

The North Dakota Supreme Court, in decisions before 1981, held that the definition included such agencies as the State Banking Board, the Board of Barber Examiners, the Board of Pharmacy, the Public Service Commission, and the Tax Commissioner, but also held that the definition did not include the county superintendent of schools, the board of directors of an irrigation district, the State Board of Public School Education (while administering the state school construction fund), and the State Toxicologist.

During the 1979-80 interim, the Legislative Council's Administrative Rules Committee studied the Administrative Agencies Practice Act and found that it was difficult to determine whether an agency is an "administrative agency" without an Attorney General's opinion or a Supreme Court decision. As recommended by that committee, and approved by the 1981 Legislative Assembly, "administrative agency" was redefined to mean:

[E]ach board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter.

The definition also exempted the agencies that had previously been exempted under the old definition. The agencies specifically exempted from the definition of administrative agency presently are the Office of Management and Budget except with respect to rules relating to the Central Personnel System as authorized under Section 54-44.3-07, rules relating to state purchasing practices as required under Section 54-44.4-04, rules relating to records management as authorized or required under Chapter 54-46, and rules relating to the central microfilm unit as authorized under Chapter 54-46.1; the Adjutant General with respect to the Division of Emergency Management; the Council on the Arts; the State Auditor; the Department of Economic Development and Finance; the Dairy Promotion Commission; the Education Factfinding Commission; the Educational Telecommunications Council; the Board of Equalization; the Board of Higher Education; the Indian Affairs Commission; the Industrial Commission with respect to the activities of the Bank of North Dakota, the North Dakota Housing Finance Agency, the North Dakota Municipal Bond Bank, and the North Dakota Mill and Elevator Association; the Department of Corrections and Rehabilitation; the Board of Pardons; the Parks and Tourism Department; the Parole Board; the Superintendent of Public Instruction except with respect to rules prescribed under Section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under Section 15-38-18; the State Board of Public School Education while administering the state school

construction fund; the State Fair Association; the State Toxicologist; the Board of University and School Lands except with respect to activities under Chapter 47-30.1; the Administrative Committee on Veterans' Affairs except with respect to rules relating to the supervision and government of the Veterans Home and the implementation of programs or services provided by the Veterans Home; and the Industrial Commission with respect to the lignite research fund except as required under Section 57-61-01.5.

At the suggestion of a representative of the Greater North Dakota Association, the committee decided it should review this list of exemptions to determine if any or all of the exemptions are still legitimate.

The committee considered a bill draft that removed all the exemptions from the definition of administrative agency in NDCC Section 28-32-01. Testifying in opposition to their exemption being removed from the definition were representatives of the State Board of Equalization, North Dakota Council on the Arts, Department of Corrections and Rehabilitation, Parole and Pardon Boards, Parks and Tourism Department, State Auditor, Board of Higher Education, Bank of North Dakota, Office of Management and Budget, Board of University and School Lands, North Dakota Housing Finance Agency, Municipal Bond Bank, Industrial Commission with respect to the lignite research fund, North Dakota Mill and Elevator, Administrative Committee on Veterans' Affairs, State Toxicologist, Superintendent of Public Instruction, and the State Fair.

Although the committee recognized that some of the agencies may have legitimate reasons for being exempt, the committee decided that each agency should have to justify its exemption to the Legislative Assembly.

### **Recommendation**

The committee recommends Senate Bill No. 2023 to amend North Dakota Century Code Section 28-32-01 to remove the exemptions from the definition of administrative agency.

### **CHILD SUPPORT STUDY**

Section 24 of 1991 Senate Bill No. 2002 provided that the Legislative Council shall "consider studying the impact of various child support guideline models on family units, on the quality of the relationships among the persons in the families affected by the guidelines, and on children who receive child support. The study, if conducted, should address the impact of the various models and whether the various models provide adequate financial support for the children involved."

Section 24 was added to Senate Bill No. 2002 when 1991 House Bill No. 1428, which would have required the Department of Human Services to assume the income of both parents is available to support a child and use an income shares model when developing the child support guidelines, failed in the Senate.

### **Background**

#### **Federal Law**

Federal law requires states to establish guidelines for child support awards. Guidelines may be established by legislative, judicial, or administrative ac-

tion. The guidelines must be reviewed at least once every four years to ensure that their application results in determination of appropriate child support award amounts. The most common method for adoption of the guidelines is judicial action, followed by legislative action, and finally a few states, including North Dakota, have adopted the guidelines by administrative rule. Federal law requires there be a rebuttable presumption that the amount of child support which would result from the application of the guidelines is the correct amount of child support. The presumption may be rebutted by a finding that the guidelines would be unjust or inappropriate in a particular case as determined under criteria established by the state. Federal law also requires that the state adopt standards for periodic review of child support orders.

### **North Dakota Law**

State law basically reiterates the requirements of the federal law. North Dakota Century Code Section 14-09-09.7, in addition, requires that the child support guidelines must include consideration of gross income, authorize an expense deduction for determining net income, designate other available resources to be considered, and specify the circumstances that should be considered in reducing support contributions on the basis of hardship. State law provides for the periodic review of child support orders that are being enforced by the child support agency effective until October 1, 1993. On October 1, 1993, periodic review would apply to all child support cases subject to several exceptions. For those orders not enforced by the child support agency, an order would not be reviewed unless the obligor or obligee requested the review.

Much debate over guidelines in the last five years has centered on the appropriate model to be used to establish support orders. Three basic models—the income shares model, the obligor model, and the Melson Delaware formula—have been used by states to determine child support orders.

### **Income Shares Model**

The income shares model is based on the two assumptions that the support available to the child should be based on the combined income of both parents and the child should receive the same proportion of parental income that the child would have received if the parents lived together. These assumptions are predicated on recent studies that have found that expenditures on children amount to a consistent proportion of household consumption and that this proportion varies systemically with the level of household income and the number and age of children.

Application of the model involves determining combined adjusted income of parents, with some allowable deductions, and the percentage contributed by each parent; determining the combined obligation of parents toward the support of their children from the available economic evidence, less medical and child care expenses; and apportioning this amount to parents in proportion of their income.

Additional adjustments are made in some states for split, shared, or joint custody arrangements. The

custodial parent is presumed to spend the designated percentage on the child and the noncustodial parent must pay the specified amount to the custodial parent. Work-related child care expenses and extraordinary medical expenses are allotted between the parents in proportion to their net income and ordered as additional child support.

The National Center for State Courts reported that, as of February 1991, 33 states used the income shares model—Alabama, Arizona, Colorado, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, New Jersey, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, and Washington. The District of Columbia has guidelines based upon a varying percentage obligor model, but allows consideration of the custodial income once it exceeds a specific gross annual income. The three states using the Melson Delaware formula also use the combined incomes of both parents when establishing a child support award.

### **Obligor Model**

The obligor income model establishes a percentage of the obligor's income, usually net after required tax deductions, to be paid based on the viable economic evidence on the cost of rearing children. In some states, a flat percentage is used. In others, the percentage varies by number of children or economic factors. According to the National Center for State Courts, the states using the obligor income model include Alaska, Arkansas, California, Georgia, Illinois, Massachusetts, Minnesota, Mississippi, Nevada, North Dakota, Tennessee, Texas, Wisconsin, and Wyoming. The District of Columbia also uses this model.

### **Melson Delaware Formula**

Delaware's Melson formula combines a cost and income sharing approach. The model, developed by Judge Elwood Melson, has been used statewide in Delaware since 1979. It defines the basic amount required to support a child and apportions that amount between parents based on the relative disposable incomes. The formula then adds a standard of living adjustment that each parent must pay. The standard of living adjustment is 15 percent of net income for the first child and 10 percent for each additional child. The standard of living adjustment is not applied to the obligor until the obligor's income is sufficient to support the obligor minimally. Once this minimal income level is reached, the next increments of income are used for child support until the children reach the same poverty level of support. Beyond this level, the income sharing formula is used to determine the portion of the obligor's remaining income that must be contributed for child support. The formula takes into account child care and medical expenses. The Melson formula is used in Delaware, Hawaii, and West Virginia.

### **North Dakota Child Support Guidelines**

House Bill No. 1428 (1991) would have amended

NDCC Section 14-09-09.7 to require that the Department of Human Services, when developing child support guidelines, would have to assume the income of both parents is available to support the child and develop an income shares model accordingly. When testifying on the bill, representatives of the Department of Human Services distributed copies of some of the responses the department had received from a survey sent to child support enforcement agencies in other states. The responses presented by the department supported the obligor model. The department, however, received 33 responses and of the 33 states responding, 24 used the income shares model and nine the obligor model. Of the 33 responses, 16 had used both models at one time or another. When asked which model they preferred, 12 of the 16 said they preferred the income shares model, three said they preferred the obligor model, and one did not respond.

A summary of actions taken by the Department of Human Services in adopting rules establishing child support guidelines is contained in the part of this report which discusses the committee's review of those rules.

### **National Child Support Guidelines Project**

In November 1983 the House Ways and Means Committee requested the United States Office of Child Support Enforcement to establish a national Advisory Panel on Child Support Guidelines and that the project report ". . . include a full and complete summary of the [Advisory Panel's] opinions and recommendations." The congressional request specified a balanced composition for the advisory panel consisting of judicial, legislative, and child support enforcement officials; representatives of custodial and noncustodial parents; a legal scholar; and an economist.

The advisory panel was appointed in early 1984 and has met four times. As requested by the House Ways and Means Committee, the advisory panel prepared recommendations for the development of child support guidelines. These recommendations are consistent with a set of basic principles for development of child support guidelines which has also been specified by the advisory panel. These principles are as follows:

1. Both parents share legal responsibility for supporting their children. The economic responsibility should be divided in proportion to their available income.
2. The subsistence needs of each parent should be taken into account in setting child support, but in virtually no event should the child support obligation be set at zero.
3. Child support must cover a child's basic needs as a first priority, but, to the extent either parent enjoys a higher than subsistence level standard of living, the child is entitled to share the benefit of that improved standard.
4. Each child of a given parent has an equal right to share in that parent's income, subject to factors such as age of the child, income of each parent, income of current spouses, and the presence of other dependents.
5. Each child is entitled to determination of support without respect to the marital status of the

parents at the time of the child's birth. Consequently, any guideline should be equally applicable to determining child support related to paternity determinations, separations, and divorces.

6. Application of a guideline should be sexually nondiscriminatory. Specifically, it should be applied without regard to the gender of the custodial parent.
7. A guideline should not create extraneous negative effects on the major life decisions of either parent. In particular, the guideline should avoid creating economic disincentives for remarriage or labor force participation.
8. A guideline should encourage and involve both parents in the child's upbringing. It should take into account the financial support provided directly by parents in shared physical custody or extended visitation arrangements, recognizing that even a 50 percent sharing of physical custody does not necessarily obviate the child support obligation.

### **Testimony and Committee Considerations**

The committee initially decided to review two bill drafts. One draft incorporated the obligor model for child support guidelines based on the rules adopted by the Department of Human Services but including reasons a judge may deviate from the guidelines and providing for the consideration of the custodial parent's income at an income of \$18,000 and above. The second draft incorporated the income shares model for child support guidelines taking into consideration appropriate deviations by the judge.

The committee received testimony from judges, child support enforcement personnel, attorneys, and individuals concerning the drafts. The testimony ranged from opposition to both drafts to extensive revisions of the drafts. Most of the parties testifying, however, supported a two-tier approach to the consideration of custodial parents' income. A representative of the child support enforcement division of the Department of Human Services suggested a two-tiered system using 1.5 times the poverty level as the trigger for consideration of the custodial parents' income.

The committee incorporated as many of the suggestions of the individuals testifying as possible, including the suggestion to use the poverty level as the trigger for considering both incomes. The committee amended one bill draft to provide that adjusted gross income would be figured by taking the gross income and subtracting payments made pursuant to another child support order, premium payments for health insurance for the children for whom support is being sought, extraordinary medical expenses, the employer's share of the Social Security taxes paid by a parent who is self-employed, reasonable work-related child care costs, and the cost of support of other natural or adopted children residing with the noncustodial parent. The bill draft provided a formula for determining the cost of support of natural or adopted children, other than those for whom support is being sought in the proceeding before the court, residing with the noncustodial parent. The custodial parent's annual adjusted gross income would be re-

duced by an amount equal to 1.5 times the poverty line for that family which includes the custodial parent and any child who resides with the parent. One hundred fifty percent of poverty for a two-member family at the time of the committee's consideration was \$13,788, three-member family - \$17,352, four-member family - \$20,940, five-member family - \$24,504, six-member family - \$28,068, and seven-member family - \$31,644. The bill draft provided that there is a presumption that the custodial parent's income is less than 1.5 times the poverty level. That presumption may be rebutted by a preponderance of the evidence. The child support obligation would be determined by applying the schedule in NDCC Section 14-09.2-13 to the parents' combined monthly adjusted gross income and the number of children for whom support is being sought in the matter before the court. Each parent's obligation would be figured by multiplying the total child support obligation times the parent's percentage share of combined monthly adjusted gross income.

The amended bill draft also authorized a court to deviate from the schedule if the court finds the application of the chapter would be unjust, inappropriate, or would create a substantial hardship. A determination that the presumption has been rebutted would have to be supported by a written finding or a specific finding on the record. The finding must state the child support amount determined under the schedule, identify the factors that rebut the presumption, and state the child support determined to be due after the judge deviates from the schedule. Criteria to be considered in determining if the presumption is rebutted would have to take into consideration the best interests of the child or children for whom support is sought in the matter before the court and could include:

1. The increased need in cases in which support for more than six children is sought in the matter before the court.
2. The increased ability of parents, with a combined adjusted gross income that exceeds \$10,000, to provide child support in an amount that exceeds the schedule of child support obligations taking into consideration that the child's needs are being met.
3. The increased needs of children with handicapping conditions or chronic illness, except insofar as consideration of those needs is reflected in extraordinary medical expenses and work-related child care expenses.
4. The increased needs of children age 12 and older.
5. The value of the income tax exemption for supported children.
6. The effect of custody and visitation provisions, including whether children spend substantial amounts of time with each parent.
7. Extraordinary travel expenses incurred solely to allow visitation, considering the circumstances that caused the extraordinary expenses.

Most of the individuals testifying on this bill draft were supportive of the draft. The main objections concerned the complexity of the draft.

The committee determined that the bill draft was a good compromise that took into consideration the children and the relationships among the persons in the families affected by the guidelines. The income shares model, which considers the income of both parents, was perceived as the fairer of the two models. The committee supported that model so as to encourage a situation where both parents felt they were fairly treated and as a consequence the parents would provide a more cooperative atmosphere to raise the children. The committee, however, was aware that use of a pure income shares approach would require the court to obtain income figures for both parties which may result in higher legal costs. For that reason, the committee supported the provision that the custodial parent's annual adjusted gross income must be reduced by an amount equal to one and one-half times the poverty line and also supported a presumption that the custodial parent's income is less than one and one-half the poverty level. The presumption may be rebutted by a preponderance of the evidence. The committee determined that the presumption would reduce the number of cases in which additional information would have to be gathered. The committee also determined that a deduction for parents for any additional children of the parties in the household is important. Second families are becoming common and the committee determined that this would provide for all the children. Finally, the committee determined that judges should have broad authority to deviate from the child support amounts in the guidelines if those amounts would be unjust, inappropriate, or would create substantial hardship.

Among other items, the committee was particularly concerned with providing the judge with the authority to consider the effect of custody and visitation provisions, including whether children spend substantial amounts of time with each parent, on the child support award. Although the committee decided not to specify amounts that should be deducted for such things as long visitation periods, it was determined important the judge have the authority to take that into consideration in individual cases. The overriding consideration of the committee was that both parties perceive the child support decision as fair in order to reduce the animosity between the parents as much as possible and to improve the life of the child after the divorce.

### **Recommendation**

The committee recommends House Bill No. 1021 to establish child support guidelines that incorporate a modified income shares model.

TABLE A

| STATISTICAL SUMMARY OF RULEMAKING                      |       |        |           |        |         |          |
|--|-------|--------|-----------|--------|---------|----------|
| Agency   | Amend | Create | Supersede | Repeal | Special | Reserved |
| Addiction Counselors, Board of                         | 14    |        |           |        |         |          |
| Administrative Hearings, Office of                     |       | 33     |           |        |         |          |
| Agricultural Products Utilization Commission           |       | 7      |           |        |         |          |
| Agriculture, Commissioner of                           | 1     | 3      |           | 12     |         |          |
| Animal Health, Board of                                | 3     |        |           | 6      |         |          |
| Attorney General                                       |       | 14     |           | 280    |         |          |
| Banking, Department of                                 | 9     | 20     |           |        |         |          |
| Clinical Laboratory Practice, Board of                 |       | 12     |           |        |         |          |
| Counselor Examiners, Board of                          |       | 9      |           |        |         | 1        |
| Credit Review Board                                    | 13    | 7      |           |        |         |          |
| Dental Examiners                                       | 4     | 5      |           |        |         |          |
| Dietetic Practice, Board of                            |       | 1      |           |        |         |          |
| Game and Fish Department                               | 12    | 7      |           |        | 1       |          |
| Health and Consolidated Laboratories, Department of    | 265   | 192    |           | 26     | 19      | 115      |
| Highway Patrol   | 13    |        |           |        |         |          |
| Historical Board                                       | 7     | 2      |           | 1      |         |          |
| Human Services, Department of                          | 84    | 120    |           | 52     | 1       |          |
| Industrial Commission                                  | 101   | 23     |           | 7      |         |          |
| Insurance, Commissioner of                             | 19    | 60     | 9         | 1      | 2       |          |
| Job Service North Dakota                               | 1     | 3      |           |        | 1       |          |
| Labor, Commissioner of                                 | 1     | 10     |           |        |         |          |
| Management and Budget, Office of                       | 2     | 190    |           |        |         | 2        |
| Medical Examiners, Department of                       |       | 1      |           |        |         |          |
| Milk Stabilization Board                               | 15    | 1      |           |        |         |          |
| Nursing, Board of                                      | 24    | 15     |           | 24     |         |          |
| Occupational Therapy, Board of                         |       | 5      |           |        |         |          |
| Oilseed Council  | 3     |        |           |        |         |          |
| Parks and Tourism Department                           | 3     |        |           | 35     |         |          |
| Personnel Board, State                                 | 5     |        |           |        |         |          |
| Pesticide Control Board                                | 5     |        |           |        |         |          |
| Pharmacy, Board of                                     | 1     | 10     |           |        |         |          |
| Physical Therapists, Examining Committee for           | 8     | 5      |           |        |         |          |
| Plumbing, Board of                                     | 25    | 1      |           |        |         |          |
| Podiatric Medicine, Board of                           | 28    | 7      |           | 2      |         |          |
| Private Investigative and Security Board               | 3     |        |           |        | 1       |          |
| Protection and Advocacy, Committee on                  |       | 5      |           |        |         |          |
| Public Accountancy, Board of                           | 36    | 3      |           | 3      |         |          |
| Public Instruction, Superintendent of                  | 1     | 11     |           |        |         |          |
| Public Service Commission                              | 109   | 21     |           | 43     | 1       |          |
| Real Estate Appraisers Qualifications and Ethics Board |       | 20     |           |        |         |          |
| Real Estate Commission                                 | 25    | 3      |           |        |         |          |
| Retirement Board                                       | 11    | 22     |           | 2      |         |          |
| Secretary of State                                     |       | 28     |           | 181    |         |          |

| <b>STATISTICAL SUMMARY OF RULEMAKING (continued)</b>       |              |               |                  |               |                |                 |
|--|--------------|---------------|------------------|---------------|----------------|-----------------|
| <b>Agency</b>  | <b>Amend</b> | <b>Create</b> | <b>Supersede</b> | <b>Repeal</b> | <b>Special</b> | <b>Reserved</b> |
| Securities Commissioner                                    | 2            | 2             |                  |               |                |                 |
| Seed Arbitration Board                                     |              | 5             |                  |               |                |                 |
| Seed Commission  | 14           |               |                  |               |                |                 |
| Social Work Examiners, Board of                            | 3            | 1             |                  |               |                |                 |
| State Gaming Commission                                    |              | 327           |                  |               |                |                 |
| Transportation, Department of                              | 1            | 20            |                  |               |                |                 |
| Tax Commissioner   | 61           | 42            |                  | 3             |                |                 |
| Teachers' Fund for Retirement,<br>Board of Trustees of the |              |               |                  |               |                |                 |
| Veterinary Medical Examiners,<br>Board of                  | 7            | 1             |                  |               |                |                 |
| Water Commission   |              | 6             |                  |               |                |                 |
| Workers Compensation Bureau                                | 15           | 14            |                  |               |                |                 |
| <b>Total</b>   | <b>954</b>   | <b>1,294</b>  | <b>9</b>         | <b>678</b>    | <b>26</b>      | <b>118</b>      |

**Grand Total All Sections = 3,079**

# ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations is a statutory committee established by North Dakota Century Code (NDCC) Chapter 54-35.2. The commission is directed by law to study issues of common concern to the state and its political subdivisions and to report its findings and recommendations to the Legislative Council in the same manner as interim Legislative Council committees. The commission is free to establish its own study agenda except as otherwise directed by law. The 1991 Legislative Assembly enacted Senate Bill No. 2346, which provided for local government efficiency planning grants to be administered by the commission and provided an appropriation from the state aid distribution fund of \$250,000 for these planning grants.

Membership of the Advisory Commission on Intergovernmental Relations is established by NDCC Section 54-35.2-01 to include four members of the Legislative Assembly appointed by the Legislative Council, two citizen members appointed by the North Dakota League of Cities, two citizen members appointed by the North Dakota Association of Counties, one citizen member appointed by the North Dakota Township Officers Association, one citizen member appointed by the North Dakota Recreation and Park Association, and the Governor or the Governor's designee. The chairman of the commission is designated by the Legislative Council. All members of the commission serve a term of two years beginning July 1 of each odd-numbered year. Current members whose terms began on July 1, 1991, are Senators Jim Dotzenrod (Chairman) and Erwin M. Hanson; Representatives John Howard and W. C. Skjerven; League of Cities representatives Jeff Fuchs and Bill Sorensen; Association of Counties representatives Ernest Fadness and Susan Ritter; Township Officers Association representative Ken Yantes; Recreation and Park Association representative Randy Bina; and Governor George A. Sinner.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## LOCAL GOVERNMENT EFFICIENCY PLANNING GRANTS

Under NDCC Section 54-35.2-02.1, the commission is to administer planning grants of up to \$25,000 per grant to county or city governments upon approval of plans intended to increase the efficiency of local government through restructuring county or city government, changing county boundaries including consolidation of counties, or consolidating county and city services. A county or city seeking a planning grant must submit a preliminary plan for consideration by the commission. In approving a planning grant, the commission may impose any conditions it deems appropriate including requiring periodic reports or furnishing of matching funds. An appropriation of \$250,000 was made to the commission from the state aid distribution fund for purposes of making

local government efficiency planning grants during the 1991-93 biennium.

The commission adopted guidelines to govern its deliberations on planning grant applications and to provide grant applicants notice of the standards that would be applied in evaluating grant applications. The commission adopted a guideline that 50 percent matching funds would be required of a grant applicant, except that if special need is demonstrated the matching contribution of the applicant could be reduced to 25 percent of the cost of the project. The matching fund requirement was adopted to ensure a strong level of local commitment to the grant project. The commission also adopted guidelines providing that (1) grant funds may be used for planning projects for future changes in government structure or function intended to increase efficiency; (2) grant funds could not be used to fund projects that would be considered normal functions of government; (3) grant funds may not be used to encourage any particular vote on a ballot measure such as a home rule proposal, but grant funds may be used for public education purposes in relation to elections so that voters may be fully informed of the facts prior to casting ballots; and (4) the proposed project must have some potential future benefit to other political subdivisions. The requirement for a benefit to other political subdivisions was adopted because the grant program was intended for innovative projects that may prove to be useful examples for future consideration and possible adoption by other political subdivisions.

The commission decided that grant funds could be used for statewide study under sponsorship of a statewide organization, but the grant award must be made to a city or county to comply with law.

The commission decided to conduct the grant program in two separate grant rounds. The reason for this decision was that the timing of the first grant round required applications to be delivered by November 1, 1991, and some political subdivisions may not have had opportunity to include matching funds in their budgets. To allow subdivisions an opportunity to anticipate the need for matching funds, a second grant round was conducted in 1992. Every county auditor and city auditor in the state was mailed notice of each grant round, with the guidelines and application forms.

## Grant Applications Denied

The commission denied grant requests for funding that would have been used to acquire computer equipment, update city ordinances, update assessment records, and provide funding assistance for contract law enforcement and election services. The commission denied funding for certain portions of projects involving acquisition of equipment, architectural fees, and other costs viewed as not meeting planning grant guidelines. The commission noted that the projects or portions of projects for which funding was denied serve important governmental functions but acquisition of equipment, updating laws and assessments,

and similar functions involve normal costs faced by all local governments. The commission sought to allow grant funds to be used only for planning for future structural changes and cooperative efforts to achieve efficiency.

### **Grant Applications Approved**

The commission approved an award of \$16,066 to Bottineau, Renville, Burke, and Divide counties for costs associated with studying and combining multicounty election services. The grant proposal initially submitted was rejected by the commission because it called for purchase of election equipment. Upon resubmission of the project in the second grant round, representatives of the four counties informed the commission that the rejection proved beneficial because it was determined that leasing election equipment would save a substantial amount of money for each of the four counties. A report on this project is anticipated in 1993 and it is hoped that this project will serve as an example of how cooperation among counties can save money by eliminating the need to purchase expensive backup election tabulation machinery.

The commission approved a grant of \$10,000 to Cass County for public education with regard to home rule issues and proposed changes. Cass County had been working on a major restructuring project for over a year before filing the grant application. A consultant was hired and task forces were established in an effort to examine every aspect of the function of county government. Reports were prepared by each task force and recommendations were made at the conclusion of the study portion of the project. As a result of these recommendations, a home rule charter commission was established, numerous public hearings were held, and seven drafts of a home rule charter were considered. The commission recognized the substantial amount of study that had been done in Cass County and the fact that Cass County would serve as a leading example because of its preeminence in county population. The commission awarded the grant upon the condition that grant funds not be used to urge a "yes" or "no" vote on the home rule question but that grant funds be used only to provide information to the voters on home rule issues and changes if the home rule charter is approved. Cass County complied with this request by requiring all advertising media to be reviewed by the state's attorney and a separate review group to achieve an unbiased presentation of factual information. The Cass County home rule charter was defeated in the June 1992 primary election. The commission anticipates a report from Cass County officials on reasons for defeat of the home rule question and whether voters received sufficient facts to make an informed decision.

The commission awarded a grant of \$17,500 to Richland County to analyze the organizational structure of the offices of several county elected officials to determine whether those offices can be combined in some manner. Richland County citizens have been working on home rule issues for several years and the approach adopted by the county is to take very slow steps in introducing changes to county government. One phase of the study that has been completed is compilation by each county officer of a list of functions

performed within that office. These lists were considered at a joint meeting of county officials which provided an opportunity to identify areas in which duplication of functions exists. The study focuses on five existing departments to determine whether it will be possible and advantageous to combine these offices into three divisions for general administration, accounting and finance, and tax collection under the direction of a single administrative officer. Another current effort of the study is to establish qualifications for county employment in different positions to help determine proper allocation of tasks among county employees. The study process should be completed in early 1993.

The commission approved a grant award of \$7,500 to Walsh County to fund a study commission examining all aspects of county government. The Walsh County study commission developed recommendations that were presented to the board of county commissioners of Walsh County. Among the recommendations is a proposal that the county auditor, treasurer, and register of deeds should not be elected but should be offices held by qualified individuals hired by the board of county commissioners. The study commission recognized that these are important offices in Walsh County but the statutory salaries available are not considered attractive to qualified individuals. The study commission suggested election of these officials is not appropriate because unqualified candidates may be elected, as has happened in the past, which causes substantial problems in the county. The study commission also recommended that the position of county administrator be established to allow an administrator to find opportunities for combining services, eliminating duplication of functions, or finding other means of improving efficiency of county government. The Walsh County board of county commissioners recommended that the study commission proceed with its plans and the recommendations were incorporated into a home rule ballot measure that was defeated on the November 1992 ballot. The study commission has also identified issues for future studies such as possibilities of combining services with other counties. The original grant application that was approved called for a series of town meetings in Walsh County to inform voters of issues on the November ballot. At the September 1992 meeting of the commission, a change in the grant project was approved by which newspaper advertising could be purchased with grant funds to inform voters of the issues and facts relating to the November home rule ballot measure. The commission approved this change with the condition that advertising purchased with grant funds could not be used to urge passage of the ballot measure but could be used only for informational advertising to inform voters of the changes proposed.

The commission approved a grant award of \$10,500 to McHenry County for a project to be conducted under the supervision of the North Dakota Association of Counties. This grant was requested to fund a portion of a project sponsored by the National Association of Counties and IBM Corporation. The IBM Corporation supplies technical personnel and expertise to develop a model of how struggling counties can approach future needs. One of the counties to be



selected for the project was to be a low population rural county in a depressed economic area. McHenry County officials were willing to participate in this project with funding assistance and it was anticipated that the National Association of Counties would approve study of McHenry County as one of the four counties in the nation for this project. This project is in progress and it is anticipated that the final report of the study will be completed by December 31, 1992.

The commission approved a grant award of \$15,075 to Sargent County for a grant project to be conducted under the supervision of the North Dakota Association of Counties. Counties have established computer systems without coordination of efforts. A survey conducted by the North Dakota Association of Counties found 15 different computer platforms and nine different kinds of computer software in use in county auditors' offices. County computer usage becomes even more diverse as other county offices are considered. The purpose of this study project is to determine what can be done to provide for coordination of county computer purchases and usage to prevent a proliferation of different computer systems and to enhance the possibility of compatibility or communication among systems. Several state agencies have requested counties to establish computer compatibility with state computer systems. The proposed means to oversee computer systems at the county level is the North Dakota County Association for Technology, which would be funded by a contract with the Secretary of State, a contract with the Department of Human Services, a drug program grant from the Attorney General's office, the local government efficiency planning grant, and contributions or assessments from the individual counties that are members of the North Dakota Association of Counties. The commission received a preliminary report on progress under this grant project describing the goals and objectives developed, organizational structure, and general work plan established for the North Dakota County Association for Technology. It is anticipated that this will be an ongoing project.

The commission approved a grant award of \$12,000 to the city of Oakes for a study involving participation of 15 cities under the supervision of the North Dakota League of Cities. The goal of the project is to promote cooperative efforts among cities to investigate financing, intercommunications, instructional needs, and implementation strategies to determine how cooperative efforts can be of benefit to cities. The preliminary report under this study recognized needs to establish conventions and regional meetings to provide training and skills programs for city leaders, communicate with respect to effective or innovative programs that are being implemented in other cities, assist cities in developing cooperative services, develop models for consideration, clarify joint powers agreements, support expanded home rule powers, consider transfer of powers, and consider the blueprints and tools being developed by the North Dakota Consensus Council, Inc.

The commission approved a grant award of \$8,500 to Stark County for a home rule feasibility study. Stark County faces a "boom and bust" economy due to oil development and other factors and the county has continually searched for means to address its legal

responsibilities in the most efficient manner with resources available. The study under the grant award was completed and the final report delivered to the commission. Study findings state that change in government is difficult to accomplish in North Dakota because of inertia and resistance to change, that governmental change made in gradual phases appears to be more acceptable to voters than wholesale restructuring of local government, and that elected county officials fear giving too much power to the board of county commissioners. If the elected status of county offices is eliminated there is concern among county officers that the power of appointment to those positions will be abused and current officeholders have an interest in retaining their jobs. Another factor identified in the report as an impediment to structural change in county government is that groups that have traditionally had political power within the county fear changes that might diminish their power. The report stresses the need to educate the public on all aspects of any proposed change to local government structure. The report recommends that county government reform itself because problems and issues faced by counties will grow in number and counties should take the lead in shaping their futures. The report states that citizens want local government control but the paradox is that they fear home rule. Home rule is cited as a useful tool to accomplish the goal of less state control of local government but the report says a significant education effort is needed to permit citizens to understand the potential benefits of home rule. The consultant who completed the study for Stark County has made plans to meet with representatives of other counties in southwestern North Dakota to discuss the study findings.

The commission approved a grant award of \$18,000 to the city of Grand Forks and the county of Grand Forks for a joint project on restructuring and possible consolidation of county and city government. A portion of the study was to be devoted to examination of city and county home rule needs. The city of Grand Forks has a home rule charter but the county of Grand Forks does not. After this grant was awarded, a Grand Forks County home rule charter proposal was presented to the voters and overwhelmingly defeated in the June 1992 primary election. A progress report presented to the commission indicates that work on the study did not progress during the first half of 1992, pending completion of the Grand Forks County home rule charter. The defeat of the home rule charter limited the possibilities for consolidating city and county departments unless there is state legislative action. The city and county of Grand Forks requested that the commission approve a change in the study under which the total cost would be \$24,000 and the local matching contribution would be reduced to \$6,000 or 25 percent of the total. The commission refused the request because no special financial need was demonstrated, but authorized use of the grant to provide equal matching funds for the cost of the changed study, up to the original project cost of \$36,000. Any grant funds not equally matched in the final project are to be returned to the commission. The city and county of Grand Forks determined that it was appropriate to hire a consultant to complete the study of the potential combining of city and county

offices to eliminate the potential bias involved in using city or county personnel to complete the study. A contract to complete the study was entered on October 19, 1992, with the University of North Dakota Bureau of Governmental Affairs. The total contract cost of the consultant is \$17,000.

The commission approved a grant award of \$6,917.34 to the city of Oakes for a study to be conducted under the direction of the North Dakota League of Cities to plan for more effective and efficient communications among cities and state and local government. The first grant award to the city of Oakes was for a study of several aspects of how cooperative efforts can be of benefit in the future for cities. This grant project focuses on communications needs because communication was determined to be vital to cities' futures. This study would begin with a survey of cities to determine the present resources of cities in terms of communications equipment and personnel. Many smaller cities have only part-time employees and do not have computers to assist these employees. It is often difficult to contact officials in some cities in which there are no full-time employees. The North Dakota League of Cities will work with the consulting firm used by the State Information Services Division, with personnel of the Information Services Division, and with the Bureau of Governmental Affairs at the University of North Dakota. Because North Dakota has 364 cities, many of which have very limited resources for communications, the goal of the study was stated as how to effectively communicate among various levels of government with various levels of resources and achieve cost efficiency. It was suggested that if an effective communications system can be established among cities and other levels of government, rapid sharing of ideas and information would eliminate a substantial duplication of effort and provide improved services.

The commission approved a grant award of \$25,000 to the city of Bismarck for a joint effort among eight political subdivisions including the cities of Bismarck and Mandan, the counties of Morton and Burleigh, the Bismarck and Mandan school districts, and the Bismarck and Mandan park districts. The project is an attempt to develop an advocate for intergovernmental cooperation and to develop strategies for local governments to meet future needs. The means of accomplishing these goals is establishment of a joint service council consisting of representatives from each of the eight units of local government involved in the project. The eight political subdivisions have a substantial number of functions in which resources are already shared and a joint service council could enhance the ability of these political subdivisions to work cooperatively or consolidate services and to examine the need for new approaches to providing government services. The study is also intended to establish a conference on the future of local government. After a meeting or series of meetings among units of local government, it is proposed that a network of local government units could be established to take a leadership role in bringing political subdivisions of the state together to discuss issues of common concern. It is anticipated that a final report on this project will be completed by December 15, 1992.

The commission approved a grant award of \$7,500

to Ramsey County for a project involving home rule election citizen education activities. Ramsey County representatives requested funding for a county home rule demonstration project intended to educate and inform the public in Ramsey County about the effects of home rule. Ramsey County officials have been in contact with other counties in which home rule petitions have recently been submitted to voters, in an effort to assess what information is necessary to be communicated to voters to fully inform them of home rule issues. Part of the project involves contracting with an educational institution to provide an objective narrative about home rule and its probable effects. Ramsey County representatives said information presented to voters through the grant would be educational in nature and would not urge a particular vote on the proposed home rule charter. A formal home rule charter commission was to be formed in hopes of placing a charter before the voters on the November general election ballot. The general election ballot in Ramsey County did not include a home rule measure and the commission anticipates a report from Ramsey County officials on their plans.

The commission approved a grant award of \$6,500 to the city of Carrington for a study on the potential consolidation of city services. Carrington city offices are located in several buildings in the city. The possibility that the National Guard would vacate the armory in Carrington would leave the upkeep and maintenance of the armory to the city of Carrington. The city is undertaking a project to determine the best option for locating city offices. It was pointed out that this project is a beginning of the planning process and the ultimate cost of completing the project may be substantial. It was suggested that these are not normal expenses of government because the project involves examination of restructuring of local government. Another feature of the study is examination of the feasibility of combining government offices.

The commission approved a grant award of \$25,000 to the city of Mandan and Morton County on a joint study of the consolidation of city and county services. Morton County and the city of Mandan have already combined several services and these combinations seem to have worked well in the opinion of representatives of the city and county. The stated purpose of this study project is to address combining a broader range of services and investigate the possibility of collocating some county and city departments if that would better serve the public. Representatives of Mandan and Morton County said many issues are to be examined by local officials and the desire is to study technical matters with the assistance of experts and then report the findings for public consideration at a series of public meetings or other appropriate forum. Commission members suggested that this project examine the feasibility of combining county and city government into a single entity.

The commission approved a grant award of \$12,500 to Williams County for a county office collocation study. Williams County has had considerable experience in consolidating and sharing of services because the county has been forced to find ways to consolidate due to serious tax problems caused by deficiencies in payment of special assessments after the last oil boom in the area. Consolidation of the city assessor's office

with the county tax director's office in 1986 has resulted in an estimated savings of \$25,000 per year for the county and city. The purpose of the study is to examine the feasibility of collocating or combining several agencies. A consultant would do the detailed planning necessary to complete this study project. This study would look at possible functional changes in combining county offices as well as simply collocating offices. It is anticipated that this project will be completed in early 1993.

### **Summary of Approved Applications**

The grant projects awarded funding by the commission show diversity in distribution among political subdivisions on the basis of population and geographical factors. The projects for which funding was approved also show diversity in approaches to restructuring delivery of local government services. Because the local government efficiency planning grant program was a new program, the commission spent a substantial amount of its interim activity creating the framework for the program, reviewing applications, and receiving reports. Representatives of the North Dakota League of Cities and the North Dakota Association of Counties recommended that the grant program be continued in the future. It was suggested that the grant program would not require as much time in the future and that the process might be streamlined. Neither organization recommended a level of funding for the grant program in the future.

During the 1991-92 interim, the commission awarded local government efficiency planning grants to 15 grant applicants. The total amount awarded in grants in both grant rounds was \$198,558.34, which leaves \$51,441.66 that will not be expended from the appropriation.

### **Conclusion**

The commission makes no recommendation regarding the local government efficiency planning grant program. It is anticipated that the grant program would not occupy so much of the commission's time in the future. Although statutory authority exists for the local government efficiency planning grant program, the commission makes no recommendation with regard to funding for continuation of the program.

### **JOINT OR COOPERATIVE ACTION OF POLITICAL SUBDIVISIONS**

Many sections of North Dakota law provide for joint exercise of powers between or among political subdivisions in specific instances. In addition, general authority for cooperative action among political subdivisions is provided under Article VII, Section 10, of the Constitution of North Dakota and NDCC Section 54-40-08. These two provisions for general authority allow any political subdivision to enter an agreement with any other public entity to jointly carry out any function or duty that one of the parties may perform under law.

Confusion has existed in interpreting the general and specific provisions for joint exercise of powers. Some observers have expressed the opinion that if state law does not specifically allow joint exercise of powers in specific circumstances, the power does not

exist. This is incorrect. North Dakota Century Code Section 1-02-07 provides that a general provision and a special provision of law must be construed so that effect may be given to both provisions but if the conflict between the two provisions is irreconcilable, the special provision must prevail and be construed as an exception to the general provision. This appears to be a reasonable approach in interpreting joint powers laws. The general constitutional and statutory authority for joint powers agreements provides authority for such agreements when statutory law is otherwise silent. If the Legislative Assembly enacts a specific provision governing certain joint powers agreements, it is reasonable to assume that the Legislative Assembly intended the specific provision to apply to limited circumstances and found justification for imposing specific requirements to that situation. This intention is further supported by passage of 1991 House Bill No. 1389, which amended NDCC Section 54-40-07 to provide that general authority to enter joint powers agreements applies to all situations except those situations in which a specific provision of law imposes limitations on joint powers agreements.

The commission considered and approved a model joint powers agreement for consideration by political subdivisions that was prepared by a cooperative effort among several groups. The commission requested that copies of the model joint powers agreement be mailed to the auditor of each city and county in the state with a request that copies of joint powers agreements already in effect be mailed to the Legislative Council staff and maintained in Legislative Council files as a repository for political subdivisions seeking examples of joint powers agreements. Several joint powers agreements were received and are on file in the Legislative Council office for use as examples upon request by political subdivisions. The commission requested that Legislative Council staff provide copies of these joint powers agreements to political subdivisions upon request but that legal advice on use of these agreements not be given, as local officials should seek legal advice from their own counsel.

### **Conclusion**

The commission makes no recommendation for changes in the law regarding joint powers agreements among political subdivisions. The commission finds that there is confusion because of erroneous interpretations of state law but that existing state law provides adequately for entry of joint powers agreements among political subdivisions in all cases in which political subdivisions have legal authority to act and that the only limitations on that authority are those limitations specifically and intentionally enacted by the Legislative Assembly.

### **POLITICAL SUBDIVISION LEVY AUTHORITY**

Due to a 1979 Supreme Court decision, the 1981 Legislative Assembly extensively restructured North Dakota's property tax assessment procedures. Passage of 1981 Senate Bill No. 2323 created property classifications and assessment valuation changes for property in the state. The statewide effect of the bill for all property showed little change or slight increases in assessments for agricultural and commer-

cial property, a slight decrease in assessment for residential property, and significant reductions in assessments for railroad and utility property. Although the statewide averages showed little variation, at local levels erratic changes in tax bases were likely after the 1981 legislation. It was estimated in 1981 that assessed values would increase in 38 counties, with 25 counties showing an increase of 10 percent or more. It was also estimated that assessed values would decrease in 15 counties, with four counties having a decrease of 10 percent or more. Assessed valuations in smaller political subdivisions were estimated to be subject to potentially more radical fluctuations.

The 1981 Act contained a provision to stabilize local levying authority by allowing political subdivisions the option of using the amount levied in dollars in the previous year as a tax base with a percentage increase. This provision was to be in effect for only two years. The 1983, 1985, 1987, 1989, and 1991 Legislative Assemblies have also enacted two-year

legislation to allow political subdivisions this optional property tax levy percentage increase authority. Enactment of this type of legislation has been necessitated by the fact that assessed valuation differences still exist and are not likely to disappear. In addition, political subdivisions that have used the percentage increase levy authority in years since 1981 may now be well above normal statutory mill levy limits and would be required to reduce budgets substantially if optional levy increase authority is now reenacted.

#### **Recommendation**

The commission recommends Senate Bill No. 2024 to allow taxing districts the option of using previous levies in dollars as the basis to determine current levy limitations in the 1993 and 1994 tax years. The bill allows a taxing district to levy up to four percent more for a budget year than was levied in dollars in the base year. The base year is defined as the taxable year with the highest amount levied in dollars of the three taxable years immediately preceding the budget year.

# BUDGET SECTION

The Budget Section was assigned the following duties for the 1991-93 biennium either by statute, resolution, or Legislative Council directive:

1. North Dakota Century Code Section 4-19-01.2 provides that the State Forester may spend moneys in the State Forester reserve account, subject to Budget Section approval and within limits of legislative appropriations, for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined by the State Forester.
2. North Dakota Century Code Section 15-10-12.1 requires the Budget Section to review and act upon State Board of Higher Education requests for authority to construct buildings or campus improvements on land under the board's control when the construction is financed by donations, gifts, grants, and bequests; and to act upon requests from the board for authority to sell any property or buildings which an institution of higher education has received by gift or bequest.
3. North Dakota Century Code Section 15-10-18 requires institutions of higher education to charge nonresident students tuition in amounts to be determined by the State Board of Higher Education with the approval of the Budget Section.
4. North Dakota Century Code Section 20.1-02-05.1 requires the Game and Fish Department to obtain Budget Section approval of a comprehensive statewide land acquisition plan established by the department and every land acquisition by the department of more than 10 acres or exceeding \$10,000.
5. North Dakota Century Code Section 50-06-05.1(17) provides that the Department of Human Services, with the approval of the Budget Section, may terminate the food stamp program should the rate of federal financial participation and administrative costs provided under Public Law 93-347 be decreased or limited, or should the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
6. North Dakota Century Code Section 50-06-05.1(19) provides that the Department of Human Services, with the approval of the Budget Section, may terminate the energy assistance program should the rate of federal financial participation and administrative costs be decreased or limited to less than 50 percent of the total administrative costs, or should the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
7. North Dakota Century Code Section 54-14-01.1 requires the Budget Section to review periodically the actions of the Office of the Budget (a division of the Office of Management and Budget) regarding the following budget office statutory duties: (1) requiring itemized statements before payment of claims against the state; (2) regulations regarding departmental payroll procedures; (3) use of electronic funds transfer systems for payment of departmental payrolls; (4) regulations regarding standardized voucher forms and disapproval of claims; and (5) withholding from state employee compensation.
8. The 1973 Legislative Assembly assigned the duties of the auditing board to the Executive Budget Office. North Dakota Century Code Section 54-14-03.1 requires the Executive Budget Office to submit a written report to the Budget Section documenting irregularities, discovered during the preaudit of claims, and areas where more uniform and improved fiscal practices are desirable. The definition of irregularities includes payments of bonuses, cash incentive awards, and temporary salary adjustments to state employees.
9. North Dakota Century Code Section 54-16-01 allows Emergency Commission transfers from the state contingency fund in excess of \$500,000 only to the extent the requests for transfers are approved by the Budget Section.
10. North Dakota Century Code Section 54-27-22 requires Budget Section approval of state agency and institution requests for moneys from the capital improvements preliminary planning revolving fund. House Bill No. 1004 (1989) transferred the July 1, 1989, preliminary planning revolving fund balance of approximately \$108,000 to the general fund.
11. North Dakota Century Code Section 54-27-23 relates to cash flow financing and provides that evidences of indebtedness may not be issued to offset projected deficits in state finances unless approved by the Budget Section. The Budget Section may approve additional cash flow financing of up to 80 percent of estimated general fund revenues relating to sales or production occurring prior to June 30, to be collected in July or August after the end of the biennium. If a revenue shortfall of more than five percent occurs, the Office of Management and Budget must order budget allotments prior to approval by the Budget Section of additional cash flow financing. All borrowing must be repaid by the end of the biennium.
12. North Dakota Century Code Section 54-27.2-03 provides that any transfer of funds from the budget stabilization fund to the general fund due to a decrease in general fund revenues be reported to the Budget Section.
13. North Dakota Century Code Section 54-34.3-03 requires Budget Section approval prior to the establishment of additional divisions of the Department of Economic Development and Finance as determined by the director of the department to be necessary.
14. North Dakota Century Code Section 54-34.3-04 requires that the Department of Economic Development and Finance report annually to a Legislative Council committee on loan performance and performance of the department. The

- Legislative Council assigned this responsibility to the Budget Section.
15. North Dakota Century Code Section 54-35.2-02.1(3) requires the Advisory Commission on Intergovernmental Relations to report annually to the Budget Section on planning grants distributed to counties and cities.
  16. North Dakota Century Code Section 54-44.1-07 provides that the Legislative Council is to prescribe the form that budget data, prepared by the director of the budget, is presented to the Legislative Assembly. The Legislative Council assigned this responsibility to the Budget Section.
  17. North Dakota Century Code Section 54-44.1-13.1 provides that, subject to Budget Section approval, the director of the budget is to reduce state agency and institution budgets by a percentage sufficient to cover the estimated losses caused by initiative or referendum action.
  18. North Dakota Century Code Section 57-01-11.1 requires that upon Budget Section request, the Tax Commissioner submit reports to the Budget Section on the progress made in collecting additional tax revenues under the enhanced audit program and on settlements of tax assessments.
  19. House Bill No. 1016 (1991 Session Laws Chapter 16) authorizes the director of the Department of Transportation, subject to Budget Section approval, to transfer appropriation authority among the various divisions of the department.
  20. House Bill No. 1016 (1991 Session Laws Chapter 16) provides an appropriation of special funds to the Department of Transportation, subject to Budget Section approval, for expenses related to additional highway maintenance, construction, and reconstruction projects during the 1991-93 biennium if additional federal highway funds are available.
  21. House Bill No. 1019 (1991 Session Laws Chapter 19) authorizes the Board of Higher Education, subject to Budget Section approval, to enter into a lease purchase agreement with the Seed Department to acquire title to Hastings Hall on the North Dakota State University campus from the Seed Department.
  22. House Bill No. 1021 (1991 Session Laws Chapter 21) authorizes the director of the Department of Corrections and Rehabilitation, subject to Budget Section approval, to transfer appropriation authority among the various divisions of the department.
  23. House Bill No. 1575 (1991 Session Laws Chapter 404) requires any North Dakota ethanol plant receiving production incentives from the state to file a statement certified by a certified public accountant with the Budget Section indicating whether the plant produced a profit in the preceding fiscal year after deducting payments received under the incentive program.
  24. Senate Bill No. 2001 (1991 Session Laws Chapter 28) requires the Attorney General to report to the Budget Section any deficiency appropriation to be introduced to the 1993 Legislative Assembly to reimburse the state bonding fund for providing defense services to eligible state employees.
  25. Senate Bill No. 2002 (1991 Session Laws Chapter 29) authorizes the director of the Department of Human Services, subject to Budget Section approval, to transfer appropriation authority among the various divisions of the department.
  26. Senate Bill No. 2002 (1991 Session Laws Chapter 29) requires the Department of Human Services to report to the Budget Section the amount of any prospective deficiency appropriation that will be requested of the 1993 Legislative Assembly if federal financial participation funds are less than estimated for the 1991-93 biennium.
  27. Senate Bill No. 2002 (1991 Session Laws Chapter 29) requires the Department of Human Services to report to the Budget Section the amount of any prospective deficiency appropriation that will be requested of the 1993 Legislative Assembly if general fund appropriations are insufficient to comply with federal mandates during the 1991-93 biennium.
  28. Senate Bill No. 2002 (1991 Session Laws Chapter 29) requires the Department of Human Services to report to the Budget Section any anticipated general fund deficiencies due to projected deficiencies in State Hospital income or Medicaid grant funding and to obtain Budget Section approval to continue spending at a level that would require a deficiency appropriation from the 1993 Legislative Assembly.
  29. Senate Bill No. 2004 (1991 Session Laws Chapter 31) authorizes the director of the Office of Management and Budget, subject to Budget Section approval, to transfer appropriation authority among the various divisions of that office.
  30. Senate Bill No. 2007 (1991 Session Laws Chapter 34) requires the Adjutant General to report to the Budget Section on the funds received and spent for the Veterans Cemetery.
  31. Senate Bill No. 2020 (1991 Session Laws Chapter 47) requires the Public Employees Retirement System to report to the Budget Section on the status of the group insurance plan's reserve fund, the required balance of the reserve fund, and what action or events are necessary or have occurred in reaching the required balance.
  32. Senate Bill No. 2058 (1991 Session Laws Chapter 95) requires the Department of Economic Development and Finance to obtain Budget Section approval prior to substituting alternative positions for authorized positions of the department to utilize its personnel in the most effective manner.
  33. Senate Bill No. 2168 (1991 Session Laws Chapter 584) requires the Office of Management and Budget to report to the Budget Section on the receipt and expenditure of other funds approved by the Emergency Commission under that bill.
  34. Senate Bill No. 2258 (1991 Session Laws Chapter 597) provides that any transfer of funds from the budget stabilization fund to the general fund to offset a negative balance in the general fund be reported to the Budget Section.

35. Senate Concurrent Resolution No. 4009 (1991 Session Laws Chapter 822) authorizes the Budget Section to hold the required legislative hearings for federal block grants under the Omnibus Budget Reconciliation Act of 1981. The Budget Section authority is in effect through September 30, 1993.

36. Pursuant to a Legislative Council directive, the Budget Section is to review and report on the budget data prepared by the director of the budget and presented to the Legislative Assembly during the 1992 organizational session.

Budget Section members were Senators Harvey D. Tallackson (Chairman), William G. Goetz, William S. Heigaard, Jack Ingstad, Tish Kelly, Elroy N. Lindaas, Evan E. Lips, Corliss Mushik, Pete Naaden, Gary J. Nelson, David E. Nething, Rolland W. Redlin, Larry J. Robinson, Joseph A. Satrom, Russell T. Thane, Dan Wogsland, and Jim Yockim; Representatives Ronald A. Anderson, Gordon Berg, Rick Berg, Jim Brokaw, Jack Dalrymple, Judy L. DeMers, Gereld F. Gerntholz, Roy Hausauer, John Howard, Roxanne Jensen, Lee Kaldor, Richard Kloubec, Bruce Laughlin, Ray Meyer, Rosemarie Myrdal, Robert E. Nowatzki, Doug Payne, Cathy Rydell, Raymond Schmidt, John Schneider, Bill Starke, Scott B. Stofferahn, Kenneth N. Thompson, Ben Tollefson, Francis J. Wald, Janet Wentz, and Gerry L. Wilkie; and Lt. Governor Lloyd Omdahl.

The Budget Section submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

The Budget Section was not required to hold public block grant hearings since the state did not receive, in addition to the moneys appropriated by the Legislative Assembly for the 1991-93 biennium, federal block grant moneys under the Omnibus Budget Reconciliation Act of 1981.

The Budget Section did not receive requests or reports:

1. From the State Forester for approval to spend moneys in the State Forester reserve account for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding.
2. From the Department of Human Services to terminate the food stamp or energy assistance programs as a result of a decrease in the rate of federal financial participation.

3. From the Emergency Commission for approval to transfer funds from the state contingency fund in excess of \$500,000.
4. From state agencies or institutions for moneys from the capital improvements preliminary planning revolving fund.
5. To approve cash flow financing to offset projected state financial deficits.
6. From the director of the budget for approval to reduce state agency and institution budgets by a percentage sufficient to cover the estimated losses caused by initiative or referendum action.
7. From the director of the Department of Transportation for approval to transfer appropriation authority among the various divisions of the department.
8. From the director of the Department of Transportation for approval to spend the appropriation of special funds, for expenses related to additional highway maintenance, construction, and reconstruction projects during the 1991-93 biennium.
9. From the Board of Higher Education for approval to enter into a lease purchase agreement with the Seed Department to acquire title to Hastings Hall on the North Dakota State University campus from the Seed Department.
10. From the director of the Department of Corrections and Rehabilitation for approval to transfer appropriation authority among the various divisions of the department.
11. From the Attorney General concerning any deficiency appropriation to be introduced to the 1993 Legislative Assembly to reimburse the state bonding fund.
12. From the Department of Human Services regarding any anticipated general fund deficiencies due to projected deficiencies in State Hospital income or Medicaid grant funding, or to obtain approval to continue spending at a level that would require a deficiency appropriation.

#### **STATUS OF THE STATE GENERAL FUND**

At each Budget Section meeting a representative of the Office of Management and Budget reviewed the status of the state general fund and revenue collections.

#### **General Fund Balance**

The following is a summary of the state general fund for the 1991-93 biennium:

|  | <b>Original<br/>Legislative<br/>Estimate</b>                      | <b>June 1992<br/>Estimate</b>                           |
|--|---|---|
| Unobligated general fund<br>balance - July 1, 1991                                 | \$ 104,942,309  | \$ 105,668,764  |
| 1991-93 general fund sources   | 1,117,451,000   | 1,068,638,575   |
| 1991-93 general fund uses  | <u>(1,198,630,674)</u>  | <u>(1,197,307,339)</u>                                  |
| Preliminary June 30, 1993,<br>general fund balance                                 | \$ 23,762,635   | \$ (23,000,000)   |
| Rural development fund obligation<br>June 30, 1993, general fund balance           | <u>(4,000,000)</u>  | <u>0</u>  |
| Budget stabilization fund<br>June 30, 1993, funds<br>available to the general fund | <u>\$ 19,762,635</u><br><u>24,000,000</u><br><u>\$ 43,762,635</u> | <u>\$ (23,000,000)</u><br><u>23,000,000</u><br><u>0</u> |

Actual revenue collections through September 1992 were \$5.5 million more than the June 1992 revised revenue forecast. A comparison of actual collections,

through September 1992, to the June 1992 revised revenue forecast by revenue types, is as follows:

| <b>Revenue Type</b>   | <b>June 1992<br/>Forecast</b> | <b>Actual<br/>Collections</b> | <b>Variance</b>     | <b>Percentage</b> |
|-----------------------|-------------------------------|-------------------------------|---------------------|-------------------|
| Sales tax             | \$283,302,000                 | \$284,999,845                 | \$ 1,697,845        | .5                |
| Individual income tax | 143,682,000                   | 144,912,127                   | 1,230,127           | .8                |
| Corporate income tax  | 43,375,000                    | 46,568,222                    | 3,193,222           | 7.3               |
| Oil tax               | 53,020,000                    | 51,934,037                    | (1,085,963)         | (2.0)             |
| Coal tax              | 25,631,000                    | 26,442,402                    | 811,402             | 3.2               |
| Other                 | <u>103,261,000</u>            | <u>102,944,631</u>            | <u>(316,369)</u>    | <u>(.3)</u>       |
| Total                 | <u>\$652,271,000</u>          | <u>\$657,801,264</u>          | <u>\$ 5,530,264</u> | <u>.8</u>         |

### Revenue Revisions

A June 1992 revised revenue forecast was presented to the Budget Section at the October 1992 meeting. The revised revenue forecast included actual collections through May 1992. The revised revenue forecast projected decreased revenues of \$51.8 million for the 1991-93 biennium. Due to the

decreased revenue projections, the Governor ordered a budget allotment of \$4.305 million. The following schedule compares the original 1991-93 revenue estimates adopted by the 1991 Legislative Assembly to the June 1992 revised revenue estimates:

| <b>Revenue Type</b>        | <b>Original<br/>Estimate</b> | <b>June 1992<br/>Estimate</b> | <b>Variance</b>        | <b>Variance<br/>of Actual<br/>Collections<br/>to the June<br/>1992 Estimate<sup>1</sup></b> |
|----------------------------|------------------------------|-------------------------------|------------------------|---|
| Sales and use tax          | \$ 460,157,000               | \$ 466,726,000                | \$ 6,569,000           | \$1,697,845   |
| Individual income tax      | 252,605,000                  | 237,370,000                   | (15,235,000)           | 1,230,127   |
| Corporate income tax       | 93,290,000                   | 76,766,000                    | (16,524,000)           | 3,193,222   |
| Cigarette and tobacco tax  | 26,040,000                   | 25,611,000                    | (429,000)              | 631,805   |
| Oil and gas production tax | 45,183,000                   | 36,423,000                    | (8,760,000)            | (491,177)   |
| Oil extraction tax         | 60,474,000                   | 49,190,000                    | (11,284,000)           | (594,786)   |
| Coal severance tax         | 21,824,000                   | 21,857,000                    | 33,000                 | 911,522   |
| Coal conversion tax        | 19,361,000                   | 19,357,000                    | (4,000)                | (100,120)   |
| Insurance premium tax      | 30,110,000                   | 30,990,000                    | 880,000                | (466,526)   |
| Interest income            | 27,053,000                   | 18,849,000                    | (8,204,000)            | (336,684)   |
| Other                      | <u>81,354,000</u>            | <u>82,517,000</u>             | <u>1,163,000</u>       | <u>(144,964)</u>  |
| Total                      | <u>\$1,117,451,000</u>       | <u>\$1,065,656,000</u>        | <u>\$ (51,795,000)</u> | <u>\$5,530,264</u>  |

<sup>1</sup> Actual revenue collections through September 1992 were \$5.5 million more than the June 1992 revised revenue forecast. This column shows the variance of actual revenue collections, through September 1992, to the June 1992 revised revenue forecast.

### HIGHER EDUCATION

#### Higher Education Buildings

The Budget Section, pursuant to North Dakota Century Code Section 15-10-12.1, approved the use of University of North Dakota lands for the construction of two buildings—a \$6,994,617 addition to the Energy

and Environmental Research Center and a \$12.6 million Institute for Agricultural Health Sciences and Rural Medicine. Both buildings are to be funded through private, federal, and other funds. The funding sources for the two buildings are as follows:



**University of North Dakota**

**Addition to the**

**Energy and Environmental Research Center**

|                                      |                           |
|--------------------------------------|---------------------------|
| Federal funds (Department of Energy) | \$3,494,617               |
| City of Grand Forks - growth fund    | 1,000,000                 |
| Bond issue                           | 2,500,000                 |
| <b>Total</b>                         | <b><u>\$6,994,617</u></b> |

**University of North Dakota  
Institute for Agricultural Health  
Sciences and Rural Medicine**

|  |                            |
|--|----------------------------|
| Federal funds<br>(Department of Agriculture) | \$ 8,675,000               |
| Alumni and private foundation<br>fund drive  | 3,925,000                  |
| <b>Total</b>                                 | <b><u>\$12,600,000</u></b> |

The Budget Section voted to approve the issuance of bonds by the Board of Higher Education in the amount of \$2.5 million for the purpose of providing the board's cost share of the construction of the addition to the Energy and Environmental Research Center. However, after the Attorney General issued an opinion that the bond issue required approval of the Legislative Assembly, Senate Bill No. 2603 was passed during the November 1991 special session. That bill authorized the bond issue and requires the Board of Higher Education to obtain a contractual obligation from the University of North Dakota Alumni Founda-

tion, or a bond issuer or credit enhancement provider, guaranteeing payment so the state is not obligated for payment of the bonds.

**Tuition Rates**

In accordance with North Dakota Century Code Section 15-10-18, the Budget Section approved the 1991-92 and 1992-93 nonresident tuition rates proposed by the Board of Higher Education.

Nonresident tuition rates vary depending on where the nonresident student is from. The Minnesota student tuition rates are 125 percent of the resident rates beginning in the 1991-92 academic year in accordance with a reciprocity agreement with Minnesota. Nonresident students not from Minnesota or another contiguous state or province pay 267 percent of the North Dakota resident tuition rate.

Students from South Dakota, Montana, Saskatchewan, and Manitoba pay 150 percent of the North Dakota resident tuition rate at North Dakota State University and the University of North Dakota. At North Dakota's four-year regional universities and two-year institutions, the students pay the same rate as Minnesota students pay, which is 125 percent of the resident tuition rate.

Because North Dakota has a reciprocity agreement with Minnesota, the Budget Section does not approve nonresident tuition rates for Minnesota students. The approved nonresident tuition rates, including the 1990-91 previously approved rates, are:

**University of North Dakota**

**Undergraduate:**

|                            | 1990-91  | 1991-92  | 1992-93  |
|----------------------------|----------|----------|----------|
| Nonresident*               | \$ 4,824 | \$ 4,968 | \$ 4,968 |
| Minnesota                  | 2,262    | 2,328    | 2,328    |
| Contiguous state/province* | 2,712    | 2,790    | 2,790    |

**Graduate:**

|                            |       |       |       |
|----------------------------|-------|-------|-------|
| Nonresident*               | 5,382 | 5,544 | 5,544 |
| Minnesota                  | 2,322 | 2,592 | 2,592 |
| Contiguous state/province* | 3,024 | 3,120 | 3,120 |

**Other:**

|                             |        |        |        |
|-----------------------------|--------|--------|--------|
| Law (Minnesota)             | 2,280  | 2,850  | 2,850  |
| Law (Nonresident)*          | 5,896  | 6,072  | 6,072  |
| Nonresident Medical School* | 21,168 | 21,804 | 21,804 |
| Minnesota Medical School    | 8,786  | 10,206 | 10,206 |

**Four-Year Regional Universities**

**Undergraduate:**

|                            |       |       |       |
|----------------------------|-------|-------|-------|
| Nonresident*               | 3,954 | 4,080 | 4,080 |
| Minnesota                  | 1,758 | 1,908 | 1,908 |
| Contiguous state/province* | 1,758 | 1,908 | 1,908 |

**Graduate:**

|                            |       |       |       |
|----------------------------|-------|-------|-------|
| Nonresident*               | 5,382 | 5,544 | 5,544 |
| Minnesota                  | 2,322 | 2,592 | 2,592 |
| Contiguous state/province* | 2,322 | 2,592 | 2,592 |

**Two-Year Institutions and Branches**

**Undergraduate:**

|                            |       |       |       |
|----------------------------|-------|-------|-------|
| Nonresident*               | 3,876 | 3,876 | 3,876 |
| Minnesota                  | 1,674 | 1,812 | 1,812 |
| Contiguous state/province* | 1,674 | 1,812 | 1,812 |

**North Dakota State University  
(per credit hour rates)**

**Undergraduate:**

|                            |        |        |        |
|----------------------------|--------|--------|--------|
| Nonresident*               | 112.14 | 115.50 | 115.50 |
| Minnesota                  | 52.50  | 54.08  | 54.08  |
| Contiguous state/province* | 63.00  | 64.89  | 64.89  |

## Tuition Rates (continued)

|                                       |        |        |        |
|---------------------------------------|--------|--------|--------|
| <b>Graduate:</b>                      |        |        |        |
| Nonresident*                          | 128.16 | 132.00 | 132.00 |
| Minnesota                             | 55.28  | 61.80  | 61.80  |
| Contiguous state/province*            | 72.00  | 74.16  | 74.16  |
| <b><u>NDSU-Bottineau</u></b>          |        |        |        |
| <b><u>(per credit hour rates)</u></b> |        |        |        |
| <b>Undergraduate:</b>                 |        |        |        |
| Nonresident*                          | 86.00  | 86.00  | 86.00  |
| Minnesota                             | 37.00  | 40.00  | 40.00  |
| Contiguous state/province*            | 37.00  | 40.00  | 40.00  |

\* Required Budget Section approval

### ENHANCED AUDIT PROGRAM

In accordance with North Dakota Century Code Section 57-01-11.1, the Budget Section heard reports from the Tax Commissioner on the progress made in collecting additional tax revenues under the enhanced audit program and on settlements of tax assessments.

The enhanced audit program was established in 1983 and allowed the Tax Department to hire additional auditors to more effectively collect taxes due to the state. For the period July 1, 1991, through September 30, 1992, the Tax Department reported total audit-related collections of \$20.9 million, which is \$0.4 million more than the goal of \$20.5 million. The enhanced audit program portion of the \$20.9 million is \$7.6 million, which is the same as the goal. Since July 1, 1983, the beginning of the enhanced audit program, total audit-related collections have amounted to \$167.8 million, \$31.1 million more than the goal of \$136.7 million.

### GAME AND FISH DEPARTMENT

#### Comprehensive Land Acquisition Plan

Pursuant to North Dakota Century Code Section 20.1-02-05.1, the Budget Section approved the North Dakota Game and Fish Department's amended comprehensive land acquisition plan. The plan indicated that the department would focus on acquisitions of lands adjacent to existing wildlife management areas, critical or unique habitats, lands needed for access to public facilities, and tracts identified as essential for attainment of one or more program management objectives. The Budget Section amended the plan to include a statement that the department plans to pay real estate taxes on the acquired land on the basis of its current use and that the plan is to include a statement that the department will identify how each land acquisition helps to achieve the comprehensive land acquisition plan objectives.

#### Land Acquisitions

North Dakota Century Code Section 20.1-02-05.1 requires the Game and Fish Department to obtain Budget Section approval for every land acquisition by the department of more than 10 acres or which exceeds \$10,000. The Budget Section approved the acquisition of a 55-acre tract of land adjacent to the Kelly Slough in Grand Forks County at a cost of \$12,500 and the acquisition of 155 acres of land adjacent to the Stack Slough in Richland County at a cost of \$51,878.

### FEDERAL FUNDS

The Budget Section heard a Legislative Council staff report on the status of 1991-93 federal funds available to North Dakota state government. The Budget Section was informed that \$1,142,972,427 of federal funds were appropriated by the 1991 Legislative Assembly, plus an additional \$25,206,619 of 1991-93 Emergency Commission approvals, for a total federal fund appropriation of \$1,168,179,046. The report indicated that, based on actual federal fund receipts for the first nine months of the biennium, and estimates for the remainder of the biennium, North Dakota will receive an estimated \$1,089,313,233 of federal funds, \$78,865,813 less than was appropriated by the 1991 Legislative Assembly and approved by the Emergency Commission. The agencies affected the most are the Department of Transportation, which is estimated to receive \$66 million less, and the State Water Commission, which is estimated to receive \$15.9 million less.

### OIL TAX COLLECTIONS

The Budget Section heard Legislative Council staff reports on the status of the state's oil tax collections, oil production, and oil market prices during the 1991-93 biennium. Oil production was lower than forecasted from June 1991 through August 1992. Oil prices were slightly above estimates from June 1991 through October 1991 and below estimated prices from November 1991 through September 1992. The average September 1992 posted oil price was \$20.32 per barrel, \$1.71 per barrel less than the March 1991 projected price of \$22.03 per barrel.

The original legislative estimate forecasted oil and gas production tax collections of \$45.2 million for the 1991-93 biennium. This was reduced to \$36.4 million in the June 1992 revised revenue forecast. Actual collections through September 1992 were \$491,177 less than the June 1992 revised revenue forecast. The original legislative estimate forecasted oil extraction tax collections of \$60.5 million for the 1991-93 biennium. This was reduced to \$49.2 million in the June 1992 revised revenue forecast. Actual collections through September 1992 were \$594,786 less than the June 1992 revised revenue forecast.

### TOUR GROUPS

Budget Section members, along with the Budget Committee on Government Administration and the Budget Committee on Government Services, con-

ducted budget tours during the 1991-93 biennium.

The tour group minutes are available in the Legislative Council office and will be submitted to the Appropriations Committees during the 1993 legislative session.

The Budget Section's eastern tour group, Senator Russell T. Thane, Chairman, visited state agencies and institutions located in the eastern part of the state. The Budget Section's north central tour group, Senator Dan Wogsland, Chairman, visited state agencies and institutions located in the north central part of the state. The Budget Section's western tour group, Senator Tish Kelly, Chairman, visited state agencies and institutions located in the western part of the state. The Budget Committee on Government Administration, Representative Roy Hausauer, Chairman, constituted the budget tour group for state institutions and agencies located in the southeastern part of the state. The Budget Committee on Government Services, Senator Larry J. Robinson, Chairman, constituted the budget tour group for human services related agencies and institutions.

The Budget Section adopted the tour group reports and although the Budget Section did not take action in regard to the tour group recommendations, it asked that the recommendations and observations listed below be presented to the Legislative Assembly for informational purposes:

1. The staff of the West Central Human Service Center, Southeast Human Service Center, and Northeast Human Service Center be complimented for their innovative and creative ideas on programs being proposed and implemented at the human service centers, and on the heavy caseloads being administered.
2. Any temporary positions at the human service centers which are actually permanent full-time positions should be reflected as full-time positions in the centers' budgets.
3. The Department of Human Services, within its appropriation for human service centers, should be responsive to critical needs at individual human service centers to meet the needs of clients if other human service centers have resources available.
4. The smokestack replacement project at the School for the Deaf is an immediate need that should be addressed as soon as possible due to the potential danger in the area surrounding the smokestack. (The School for the Deaf is requesting Emergency Commission approval to transfer \$39,000 from salaries and wages to capital improvements to replace the smokestack during the 1991-93 biennium.)
5. The tour group was impressed by UND-Lake Region's proposed library relocation project that is maximizing current facilities on the campus and would support UND-Lake Region's funding request for the project.
6. The Grahams Island State Park is developing into a fine tourist attraction.
7. The Legislative Council chairman should be requested to ask the National Guard, as a part of its weekend training exercises, to make repairs and improvements needed at the Fort Totten State Historic Site, particularly the steamline

tunnel project subject to the State Historical Society reimbursing the National Guard for direct costs relating to the projects such as materials, gasoline, etc.

8. The Budget Section be aware of the tour group's concern regarding the difficulty students have transferring courses among higher education institutions in the state.
9. Legislation should be supported during the 1993 legislative session to transfer the management of recreational areas on State Forest land from the State Forest Service to the Department of Parks and Tourism and to appropriate any revenue generated by recreational activities in these areas to the Department of Parks and Tourism.
10. A resolution should be supported directing the Legislative Council to study, during the 1993-94 interim, ways to increase cooperation and coordination of activities among the Department of Parks and Tourism, State Forest Service, Game and Fish Department, and the State Historical Society.
11. Legislation should be supported during the 1993 legislative session authorizing the Game and Fish Department, in partnership with the Department of Parks and Tourism, to purchase Boy Scout camp land or Seventh-Day Adventist camp land near Lake Metigoshe State Park, if available for purchase.
12. The need for major repair projects at the higher education institutions was observed and it was noted that many repairs are required on flat roofs. The tour group suggested that new construction and major roof repair projects be designed to eliminate flat roofs on state buildings.
13. The substantial impact the proposed 10 percent budget reductions would have on state programs and staff at state agencies and institutions was noted.
14. The need to renovate the old Memorial Library facility on the Minot State University campus was noted.
15. The tour group was impressed with the new library facility on the Minot State University campus and the capabilities of the On-line Dakota Information Network (ODIN) system.
16. Many agencies are requesting additional funding for continuing hazardous duty pay increases given employees during the 1991-93 biennium as a result of Central Personnel recommendations.
17. The dedicated directors and staff of the agencies and institutions visited were complimented on the excellent job being done.

The Budget Section urged the Legislative Council chairman to ask the National Guard, as a part of its weekend training exercises, to make repairs and improvements needed at the Fort Totten State Historic Site, particularly the steamline tunnel project, subject to the State Historical Society reimbursing the National Guard for direct costs relating to the project.

The Budget Section supports the introduction of legislation during the 1993 legislative session to transfer the management of recreational areas on State Forest land from the State Forest Service to the

Department of Parks and Tourism and to appropriate revenue generated by recreational activities in these areas to the Department of Parks and Tourism.

### ECONOMIC DEVELOPMENT AND FINANCE

The Budget Section approved, pursuant to North Dakota Century Code Section 54-34.3-03, the new organizational structure of the Department of Economic Development and Finance. Five new positions were contained within the new organizational structure. The five new positions were administrator of communications, administrator of primary sector fund, women's business development administrator, professional development administrator, and office manager. The 1991 Legislative Assembly approved 28 full-time equivalent positions within the Department of Economic Development and Finance and all of the new positions listed above are within the guidelines for the total number of full-time equivalent positions.

The Budget Section approved, pursuant to Section 52 of 1991 Senate Bill No. 2058, the substitution of a business investment analyst for a business expansion specialist and a second marketing position in place of either a community development specialist or the professional development administrator.

Pursuant to North Dakota Century Code Section 54-34.3-04, the Budget Section heard reports from the Department of Economic Development and Finance on the loan performance and performance of the department. The Budget Section received status reports on the Future Fund, Technology Transfer, Inc., Partnership in Assisting Community Expansion (PACE) program, Ag PACE program, and beginning farmer revolving loan fund.

A total of \$21,091,626 was appropriated to the

Department of Economic Development and Finance from the general fund and \$270,735 of other funds were appropriated, for a total appropriation of \$21,362,361. The Future Fund was appropriated \$6,730,000 and is to be used to take equity positions, to provide loans, or to use other innovative financing mechanisms for new or expanding businesses or relocating businesses to North Dakota. Technology Transfer, Inc., was appropriated \$3 million and is to be used to focus the resources of the university system on the discovery, development, and application of scientific and technological principles and concepts on North Dakota's primary sector businesses.

The Bank of North Dakota administers the PACE program, Ag PACE program, and beginning farmer revolving loan fund. The PACE program was appropriated \$2.7 million and is a revolving fund used to buy down interest rates on loans made by a lead financial institution in participation with the Bank of North Dakota. Ag PACE was appropriated \$996,000. The beginning farmer revolving loan fund was appropriated \$1 million and is for the purpose of making loans to North Dakota beginning farmers for the purchase of agricultural real estate.

The Budget Section passed a motion supporting the transfer of an additional \$3 million from the undivided profits of the Bank of North Dakota into the PACE fund.

### DEPARTMENT OF HUMAN SERVICES Appropriation Transfers

In accordance with Section 5 of 1991 Senate Bill No. 2002, the Budget Section approved the following transfers of appropriation authority among the various divisions of the Department of Human Services:

|  | Original<br>Appropriation | Approved<br>Changes  | Adjusted<br>Appropriation |
|--|---------------------------|----------------------|---------------------------|
| Executive director                       |                           |                      |                           |
| General fund                             | \$ 910,392                | \$ (1,625)           | \$ 908,767                |
| Other funds                              | 37,950                    | 674,525              | 712,475                   |
| Total funds                              | <u>\$ 948,342</u>         | <u>\$ 672,900</u>    | <u>\$ 1,621,242</u>       |
| Departmentwide and<br>managerial support |                           |                      |                           |
| General fund                             | \$ 5,345,525              | \$ 1,212,611         | \$ 6,558,136              |
| Other funds                              | 9,939,452                 | 353,761              | 10,293,213                |
| Total funds                              | <u>\$ 15,284,977</u>      | <u>\$ 1,566,372</u>  | <u>\$ 16,851,349</u>      |
| Economic assistance                      |                           |                      |                           |
| General fund                             | \$ 18,600,811             | \$ (74,982)          | \$ 18,525,829             |
| Other funds                              | 129,333,726               | (246,833)            | 129,086,893               |
| Total funds                              | <u>\$147,934,537</u>      | <u>\$ (321,815)</u>  | <u>\$147,612,722</u>      |
| Medical assistance                       |                           |                      |                           |
| General fund                             | \$116,498,574             | \$ 134,690           | \$116,633,264             |
| Other funds                              | 334,192,248               | 14,996               | 334,207,244               |
| Total funds                              | <u>\$450,690,822</u>      | <u>\$ 149,686</u>    | <u>\$450,840,508</u>      |
| Vocational rehabilitation                |                           |                      |                           |
| General fund                             | \$ 2,298,147              | \$ (278,093)         | \$ 2,020,054              |
| Other funds                              | 11,850,557                | (1,034,427)          | 10,816,130                |
| Total funds                              | <u>\$ 14,148,704</u>      | <u>\$(1,312,520)</u> | <u>\$ 12,836,184</u>      |

**Appropriation Transfers (continued)**

|   | <b>Original<br/>Appropriation</b> | <b>Approved<br/>Changes</b> | <b>Adjusted<br/>Appropriation</b> |
|---|-----------------------------------|-----------------------------|-----------------------------------|
| <b>Field services and<br/>program development</b>     |                                   |                             |                                   |
| General fund  | \$ 26,075,688                     | \$(2,944,932)               | \$ 23,130,756                     |
| Other funds   | <u>34,493,149</u>                 | <u>(777,919)</u>            | <u>33,715,230</u>                 |
| Total funds   | <u>\$ 60,568,837</u>              | <u>\$(3,722,851)</u>        | <u>\$ 56,845,986</u>              |
| <b>Human service centers</b>                          |                                   |                             |                                   |
| General fund  | \$ 30,871,373                     | \$ 3,296,925                | \$ 34,168,298                     |
| Other funds   | <u>26,487,267</u>                 | <u>1,094,031</u>            | <u>27,581,298</u>                 |
| Total funds   | <u>\$ 57,358,640</u>              | <u>\$ 4,390,956</u>         | <u>\$ 61,749,596</u>              |
| <b>State Hospital</b>                                 |                                   |                             |                                   |
| General fund  | \$ 39,259,893                     | \$ (996,396)                | \$ 38,263,497                     |
| Other funds   | <u>14,277,516</u>                 | <u>0</u>                    | <u>14,277,516</u>                 |
| Total funds   | <u>\$ 53,537,409</u>              | <u>\$ (996,396)</u>         | <u>\$ 52,541,013</u>              |
| <b>Developmental Center at Grafton</b>                |                                   |                             |                                   |
| General fund  | \$ 12,466,818                     | \$ (318,744)                | \$ 12,148,074                     |
| Other funds   | <u>33,785,448</u>                 | <u>(78,134)</u>             | <u>33,707,314</u>                 |
| Total funds   | <u>\$ 46,252,266</u>              | <u>\$ (396,878)</u>         | <u>\$ 45,855,388</u>              |
| <b>Children's Services<br/>Coordinating Committee</b> |                                   |                             |                                   |
| General fund  | \$ 1,051,483                      | \$ (29,175)                 | \$ 1,022,308                      |
| Other funds   | <u>1,802,899</u>                  | <u>0</u>                    | <u>1,802,899</u>                  |
| Total funds   | <u>\$ 2,854,382</u>               | <u>\$ (29,175)</u>          | <u>\$ 2,825,207</u>               |
| <b>State sexual abuse team</b>                        |                                   |                             |                                   |
| General fund  | \$ 11,757                         | \$ (279)                    | \$ 11,478                         |
| Other funds   | <u>29,364</u>                     | <u>0</u>                    | <u>29,364</u>                     |
| Total funds   | <u>\$ 41,121</u>                  | <u>\$ (279)</u>             | <u>\$ 40,842</u>                  |
| <b>Family support program</b>                         |                                   |                             |                                   |
| General fund  | \$ 1,034,050                      | \$ 0                        | \$ 1,034,050                      |
| Other funds   | <u>0</u>                          | <u>0</u>                    | <u>0</u>                          |
| Total funds   | <u>\$ 1,034,050</u>               | <u>\$ 0</u>                 | <u>\$ 1,034,050</u>               |
| <b>Totals*</b>  |                                   |                             |                                   |
| General fund  | \$254,424,511                     | \$ 0                        | \$254,424,511                     |
| Other funds   | <u>596,229,576</u>                | <u>0</u>                    | <u>596,229,576</u>                |
| Total funds   | <u>\$850,654,087</u>              | <u>\$ 0</u>                 | <u>\$850,654,087</u>              |

\* Section 4 of 1991 Senate Bill No. 2002 appropriated \$2,854,382 of funds available through the Children's Services Coordinating Committee, without reference to the \$1,051,483 of general fund moneys, to the Department of Human Services. With this adjustment the amounts agree with the 1991 Legislative Assembly appropriations to the department of \$253,373,028 general fund moneys and \$597,281,059 of special funds for a total of \$850,654,087.

**Federal Financial Participation Rate**

Pursuant to Section 7 of 1991 Senate Bill No. 2002, the Budget Section received a report from the Department of Human Services on the amount of prospective deficiency appropriations to be requested of the 1993 Legislative Assembly due to decreased federal financial participation funds for the 1991-93 biennium. The federal financial participation rate pertains to such programs as medical assistance, foster care grants, and AFDC. The Budget Section was informed that the Department of Human Services will be requesting a general fund deficiency appropriation of approximately \$1.3 million due to the decreased federal financial participation rate. Federal funds will be

decreasing by approximately \$9 million due to the lower rate.

The federal financial participation rate for federal fiscal years 1991 and 1992 was 70 percent and 72.75 percent, respectively, the same as estimated by the 1991 Legislative Assembly. The federal financial participation rate for the federal fiscal year ending September 30, 1993, will be 72.21 percent, 1.51 percent less than the estimated 73.72 percent.

**DEPARTMENT OF TRANSPORTATION**

The Budget Section heard reports from the Department of Transportation and the Legislative Council staff on North Dakota highway funding under the

newly enacted federal Intermodal Surface Transportation Efficiency Act. The new highway bill will provide approximately \$757 million in transportation funds to North Dakota over the next six years, as compared to approximately \$387 million received

over the past five years.

The Department of Transportation projects the following federal highway construction funds will be made available to North Dakota in federal fiscal years 1992 through 1997:

| <b>Federal Fiscal Year</b> | <b>North Dakota Federal Funds Apportionment</b> | <b>Required State Match</b> | <b>Total Construction Program</b> | <b>Projected State Matching Funds Available Under Current Law</b> |
|----------------------------|---|-----------------------------|-----------------------------------|---|
| 1992                       | \$ 98,000,000                                   | \$21,500,000                | \$119,500,000                     | \$17,800,000  |
| 1993                       | 115,000,000                                     | 25,200,000                  | 140,200,000                       | 14,300,000  |
| 1994                       | 115,000,000                                     | 25,200,000                  | 140,200,000                       | 13,200,000  |
| 1995                       | 115,000,000                                     | 25,200,000                  | 140,200,000                       | 13,200,000  |
| 1996                       | 115,000,000                                     | 25,200,000                  | 140,200,000                       | 13,200,000  |
| 1997                       | 115,000,000                                     | 25,200,000                  | 140,200,000                       | 13,200,000  |

A one-cent tax increase on gasoline, gasohol, and diesel fuel is estimated to generate approximately \$8.1 million of revenue per biennium to the highway tax distribution fund. Of the \$8.1 million generated, \$5.1 million would be distributed to the highway fund. The current gas tax rate is 17 cents.

### **PUBLIC EMPLOYEES RETIREMENT SYSTEM**

In accordance with Section 2 of 1991 Senate Bill No. 2020, the Budget Section heard reports from the Public Employees Retirement System on the status of the group insurance plan's reserve fund.

The surplus for the 1991-93 biennium was estimated to be \$9.8 million. This amount, in addition to the \$3.4 million surplus carried forward from the 1989-91 biennium, amounts to a total available surplus of \$13.2 million.

The projected contract rate for the 1993-95 biennium is \$269.39, after using the surplus to buy the contract rate down, compared to the current contract rate of \$254.71.

### **ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS**

The Budget Section heard reports, pursuant to North Dakota Century Code Section 54-35.2-02.1(3), from the Advisory Commission on Intergovernmental Relations on planning grants distributed to counties and cities. Please refer to the Advisory Commission on Intergovernmental Relations report regarding its activities.

### **OFFICE OF MANAGEMENT AND BUDGET**

Pursuant to North Dakota Century Code Section 54-14-01.1, the Budget Section received a report from the Office of Management and Budget reviewing the budget office statutory duties regarding cash disbursements. In regard to the Office of Management and Budget's report on the budget office statutory duties, the Budget Section took no action.

In accordance with North Dakota Century Code Section 54-14-03.1, the Office of Management and Budget reported to the Budget Section on irregularities discovered during the preaudit of claims and areas in which more uniform and improved fiscal

practices are desirable. The report stated that the Office of Management and Budget had found no fiscal irregularities since its last report.

Pursuant to a Legislative Council directive, the Budget Section received a report from the Office of Management and Budget on proposed changes to the 1993-95 budget forms. The report stated that the changes will be additions of information and summarized the additions as follows:

1. A glossary of budget terms,
2. A calendar of events (the timeframe of the budget process),
3. Basic policy statements that govern the development of the budget, and
4. A long-term revenue forecast (beyond the biennium).

Pursuant to Section 2 of 1991 Senate Bill No. 2004, the Budget Section approved the transfer of appropriation authority of \$34,500 of special funds from the Office of Management and Budget Central Operations Division to the Facility Management Division within the Office of Management and Budget appropriation bill. The transfer of funds was for two grant projects. The first project was a lighting renovation project costing \$28,500, designed to conserve energy in state offices. The second project was a paper recycling project costing \$6,000.

Pursuant to Section 2 of 1991 Senate Bill No. 2168, the Budget Section received a report from the Office of Management and Budget on the receipt and expenditure of funds approved by the Emergency Commission, pursuant to Section 2 of 1991 Senate Bill No. 2168, which authorizes the expenditure of up to \$10 million of unanticipated funds that may become available. The appropriation of \$10 million of other funds to the Emergency Commission was to allow agencies to receive and spend, upon Emergency Commission approval, funds not otherwise appropriated and to eliminate the need for continuing appropriations. Four requests were received and approved by the Emergency Commission for the receipt and expenditure of funds under the provisions of 1991 Senate Bill No. 2168. The four requests approved by the Emergency Commission were:

- Department of Public Instruction; \$180,000 from the Dale Carnegie Foundation,

- Indian Affairs Commission, \$3,936 from the Arts Midwest Grant,
- Children's Services, \$473,332 from the Casey Foundation, and
- Department of Human Services, \$50,000 from the Attorney General's lawsuit against Universal Manufacturing.

### **BUDGET STABILIZATION FUND**

The Budget Section heard a report, pursuant to Section 4 of 1991 Senate Bill No. 2258 and North Dakota Century Code Section 54-27.2-03, from the Office of Management and Budget on the transfer of funds from the budget stabilization fund to the general fund. Because Bank of North Dakota profits of \$11.6 million were transferred in September 1992 rather than December 1992, a transfer from the budget stabilization fund to the general fund was avoided. The balance of the budget stabilization fund on October 30, 1992, was approximately \$23.3 million.

### **OTHER ACTION**

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

1. The 1991-93 budget status.
2. An analysis of the 1991 Legislative Assembly changes to the recommended appropriations in the executive budget.
3. Statistical information on the 1991-93 biennium appropriations and historical appropriations statistics.
4. A 1991-93 biennium report on compliance with legislative intent.

The Budget Section heard a report by a representative of the Insurance Department on the petroleum tank release compensation fund. The fund provides petroleum tank owners up to \$1 million of insurance coverage to cover the costs resulting from tank leakages.

The Budget Section heard a report from the Office of Management and Budget on the state of North Dakota Comprehensive Annual Financial Report for the fiscal year ended June 30, 1991.

The Budget Section heard a report on the hardships created by the 1991 Legislative Assembly amendments to North Dakota Century Code Sections 15-10-18.3 and 15-10-18.5, relating to the tuition waiver for dependents of certain veterans and survivors of certain firefighters and peace officers. The report indicated that the tuition waiver is now based upon a showing of financial need. Some dependents of veterans and survivors of certain firefighters and peace officers receiving disability benefits are not qualifying for the tuition waiver. The Budget Section approved a motion urging that the State Board of Higher Education not consider payments, benefits, or income received by a resident veteran, firefighter, or peace officer, or their dependents or survivors, as a direct or indirect result of death, disability, or present or past prisoner of war or missing in action status in determining eligibility of their dependents or spouses for waivers under North Dakota Century Code Sections 15-10-18.3 and 15-10-18.5.

In accordance with Section 4 of 1991 Senate Bill No. 2007, the Budget Section received a report from the Adjutant General on funds received and spent for the Veterans Cemetery. The report stated that no state funds were appropriated during the 1989-91 or 1991-93 bienniums. The North Dakota National Guard has received federal grants of \$100,000 in fiscal years 1990, 1991, and 1992 and private moneys from the North Dakota Militia Foundation to support cemetery construction. During the 1989-91 and the 1991-93 bienniums, a total of \$38,135 has been raised in private donations and, of that amount, \$38,111.25 has been spent for cemetery construction.

The Budget Section received a report from the Department of Human Services on the status of the seriously mentally ill services in the northeast and southeast human service center regions. The report discussed the use of scattered site housing in place of a residential facility in order to serve more clients with the existing funds.

The Budget Section heard a report from the Department of Human Services on the State Hospital demolition activities and funding issues. The 1991 Legislative Assembly provided \$800,500 toward the demolition of buildings on the State Hospital grounds. The Budget Section supported the department's plan for the demolition of the "Hairpin Alley" building and the "ABC" building located on the State Hospital grounds.

The Budget Section heard a report on the Southeast Human Service Center space needs. The report indicated that the department was unable to negotiate a new lease and that the department was considering constructing a new facility. The Budget Section passed a motion urging the Legislative Council chairman to appoint a special seven-member committee to act as an advisory committee to the Department of Human Services on space needs of the Southeast Human Service Center. Please refer to the Human Services Facilities Advisory Committee report regarding its findings and recommendations.

The Budget Section received a report from the Department of Public Instruction on the reduction in foundation aid program payments for the 1992-93 school year. The report stated that foundation aid payments for the second year of the biennium will need to be decreased from the projected \$1,608 to \$1,552, the same as the 1991-92 school year foundation aid payment.

In accordance with Section 5 of 1991 House Bill No. 1575, the Budget Section received a report from the American Coalition for Ethanol on North Dakota ethanol plants receiving production incentives and whether the plants produced a profit in the preceding fiscal year, after deducting payments received under the incentive program.

The Budget Section heard a report from the Attorney General on a proposal to bill state agencies for legal services. The report said that since the 1987 legislative session, which combined assistant Attorneys General into the Attorney General's office, except for those under elected officials, agency requests for legal services have increased dramatically. The 1989-91 biennium saw an approximate 60 percent increase in legal service requests.

The Budget Section heard a report from the Industrial Commission regarding the North Dakota Building Authority's possible restructure of the 1988 and 1990 outstanding North Dakota Building Authority bond issues, at a projected savings of approximately \$2.1 million. Because of a new interpretation of an existing Internal Revenue Service regulation, the bond restructure was not completed, but a refinancing without restructuring may be completed in the

future if interest rates are favorable enough to justify a refinancing.

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 Legislative Assembly until after December 1, a supplement to this report will be submitted for distribution at a later date.



# BUDGET COMMITTEE ON GOVERNMENT ADMINISTRATION

The Budget Committee on Government Administration was assigned House Concurrent Resolution No. 3061, which directed a study of the entire range of issues arising from the current methods and philosophy governing state employees' compensation, and Senate Concurrent Resolution No. 4055, which directed a study of state agency and institution pay practices. Additionally, the committee was assigned House Bill No. 1167, Section 7, which directed a study to determine if higher education vehicles should be under the jurisdiction of the central vehicle management system.

The committee was also assigned the responsibility to monitor the status of state agency and institution appropriations, receive reports on implementation of the state's pay equity policy pursuant to 1989 House Bill No. 1035, and receive periodic reports from the Office of Management and Budget on its progress in determining necessary pay equity adjustments pursuant to 1991 House Bill No. 1023.

Committee members were Representatives Roy Hausauer (Chairman), Bruce E. Anderson, LeRoy G. Bernstein, Ron Carlisle, Dave Gabrielson, Art Goffe, Robert Huether, Kevin Kolbo, Charles Linderman, Marv Mutzenberger, Rod St. Aubyn, and Elwood Thorpe and Senators Ray David, Evan E. Lips, Pete Naaden, Joseph A. Satrom, Bryce Streibel, and Jens Tennefos.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## STATE EMPLOYEE PAY PRACTICES

### Background

House Concurrent Resolution No. 3061 directed a study of the current methods and philosophy governing state employees' compensation, including pay administration, meritorious service, short-term extraordinary effort, longevity, and career development. The resolution stated that the state's lack of a comprehensive pay administration policy contributes substantially to employee turnover and low employee morale. Senate Concurrent Resolution No. 4055 directed a study of the state agency and institution pay practices to determine if the state should enhance its employment practices to better retain state employees. The resolution stated that the state does not have a compensation plan offering state employees long-term career opportunities, that the development of an acceptable compensation plan by the Legislative Assembly would encourage more persons to seek employment within the state, that under present practices salary advancement may only be possible for employees seeking employment with other state agencies and institutions, that agencies and institutions have encountered a decline in the number of persons interested in state employment in entry-level managerial and professional positions, and that a lack of resources to fund compensation increases for persons in their early years of state employment is causing turnover problems for state agencies and

institutions. The 1991 Legislative Assembly appropriated \$856.5 million, including fringe benefits, for salaries and wages, of which \$375.1 million is from the general fund, and authorized 12,164.74 full-time equivalent (FTE) positions.

### Findings

The committee reviewed information received from representatives of state agencies, state employee groups, and personnel directors of private industries regarding pay compensation practices and methods. The following were the recommendations most frequently made by state agency representatives and state employee representatives to the committee to improve state agency and institution pay practices. The recommendations state that a pay plan should be implemented providing for:

- State employees being paid at salary levels reflecting state and regional labor market conditions.
- Salary increases based on performance or merit.
- Salary increases recognizing extraordinary services on either a long- or short-term basis.
- Salary increases based on the consumer price index and merit increases based on performance.
- Periodic salary increases based on years of experience and adequate job performance to advance employees to levels appropriately reflecting the importance of work experience.
- Career development programs for employees including employee training and access to new technologies.
- Maintaining the current levels of state employee fringe benefits.

The committee reviewed information received from representatives of the MDU Resources Group, St. Alexius Medical Center, and Melroe Company. The following are components of the pay systems of these private industries:

- Performance pay systems are utilized that provide salary increases based on annual performance reviews.
- The pay systems are based on a position's value to the organization and the respective salary market. The compensation approach is a total compensation approach that considers both salary and benefits.
- The pay systems utilize a consistent and long-term approach for funding salaries and benefits and try to avoid years with no salary increases.
- The pay systems promote career development, promotion within the organization, additional career tracks, and skills development including access to educational programs.

The committee reviewed information on state employee fringe benefits. Testimony received recommended that a compensation plan should include an appropriate mix of salaries and benefits. Fringe benefits provided to state employees in the state classified system are:

1. Annual leave
2. Sick leave

3. Funeral leave
4. Military leave
5. Jury leave
6. Witness leave
7. Holidays
8. Health insurance
9. Life insurance
10. Retiree health insurance
11. Retirement program

12. Pretax benefits program
13. Deferred compensation plan
14. Workers' compensation
15. Unemployment job insurance
16. Social Security/Medicare

The committee reviewed the following schedule that shows examples of the percentage that state employees' fringe benefits are in relation to salaries of \$15,000, \$25,000, and \$40,000 as of October 1991.

| Salary                           | Direct State Costs |                          |                  |                        |                |               |                   | Indirect Costs  |                  |                   |
|----------------------------------|--------------------|--------------------------|------------------|------------------------|----------------|---------------|-------------------|-----------------|------------------|-------------------|
|                                  | Health Insurance   | Social Security/Medicare | Retirement       | Unemployment Insurance | Life Insurance | Workers' Comp | Subtotal          | Annual Leave*   | Holidays         | Grand Total       |
| \$15,000 with single health plan | \$1,296<br>8.6%    | \$1,148<br>7.65%         | \$1,368<br>9.12% | \$60<br>.4%            | \$3<br>.02%    | \$85<br>.57%  | \$ 3,960<br>26.4% | \$ 692<br>4.6%  | \$ 606<br>4.04%  | \$ 5,258<br>35.1% |
| \$15,000 with family health plan | \$3,636<br>24.24%  | \$1,148<br>7.65%         | \$1,368<br>9.12% | \$60<br>.4%            | \$3<br>.02%    | \$85<br>.57%  | \$ 6,300<br>42.0% | \$ 692<br>4.6%  | \$ 606<br>4.04%  | \$ 7,598<br>50.7% |
| \$25,000 with single health plan | \$1,296<br>5.18%   | \$1,913<br>7.65%         | \$2,280<br>9.12% | \$60<br>.24%           | \$3<br>.01%    | \$85<br>.34%  | \$ 5,637<br>22.5% | \$1,154<br>4.6% | \$1,010<br>4.04% | \$ 7,801<br>31.2% |
| \$25,000 with family health plan | \$3,636<br>14.5%   | \$1,913<br>7.65%         | \$2,280<br>9.12% | \$60<br>.24%           | \$3<br>.01%    | \$85<br>.34%  | \$ 7,977<br>31.9% | \$1,154<br>4.6% | \$1,010<br>4.04% | \$10,141<br>40.6% |
| \$40,000 with single health plan | \$1,296<br>3.24%   | \$3,060<br>7.65%         | \$3,648<br>9.12% | \$60<br>.15%           | \$3<br>.01%    | \$85<br>.21%  | \$ 8,152<br>20.4% | \$1,846<br>4.6% | \$1,615<br>4.04% | \$11,613<br>29.0% |
| \$40,000 with family health plan | \$3,636<br>9.09%   | \$3,060<br>7.65%         | \$3,648<br>9.12% | \$60<br>.15%           | \$3<br>.01%    | \$85<br>.21%  | \$10,492<br>26.2% | \$1,846<br>4.6% | \$1,615<br>4.04% | \$13,953<br>34.9% |

\* Based on annual leave accruing at eight hours per month. Annual leave accrues in increments based on years of service. The hours accrued range from eight hours to 16 hours per month. If 16 hours is used, the percentage would be 9.2 rather than the 4.6 used in the above schedule.

The committee reviewed a report from the Central Personnel Division director that suggested methods and practices for ensuring successful recruitment and retention of state employees. The methods include the following five items that should be available to ensure successful recruitment and retention of state employees:

1. Compensation plan.
2. Recruitment and selection program.
3. Career development and training.
4. Recognition and involvement.
5. Work and family program.

The above five items should include and provide for the following:

**A. Compensation Plan**

1. A reasonable expectation of periodic review of an employee's salary and the potential for an increase on a regular basis.
2. A way to advance in a salary range by:
  - a. Basing a portion of an employee's increase on performance, or
  - b. Targeting a greater portion of a salary increase toward long-term employees who are paid at the lower end of their assigned salary range.
3. An appropriate mix of salary and benefits.

**B. Recruitment and Selection Program**

1. Use of internship programs.

2. Establishment of a fellowship program.
3. Review of qualifications set by licensing boards and other minimum qualifications.
4. Establishment of a relocation assistance program.
5. Concentration on selection:
  - a. Test for team compatibility.
  - b. Interview by committee and score the interview.
  - c. Use of an assessment center.
  - d. Pair applicants with potential coworkers.
  - e. Create realistic job previews or use realistic videos of the work setting.

**C. Career Development and Training**

1. An improvement in agency orientations.
2. Agency "basic" training that must be completed upon beginning of employment.
3. Additional training each year, in such areas as:
  - a. Customer service.
  - b. Quality management.
  - c. Computer literacy.
4. The availability of tuition assistance.
5. Individual employee development plans.
6. Development opportunities.
7. Implementation of total quality management (TQM).
8. Identification of career paths.

**D. Recognition and Involvement**

1. TQM approach.
2. Specific agency awards.
3. Certification programs.

**E. Work and Family Program**

1. Establishment of a leave bank.
2. Seminars on work and family issues.
3. Preretirement planning.
4. Availability of employee assistance programs.
5. Flextime.
6. Work-at-home options.

**Recommendations**

The committee requested that the items relating to methods and practices to be used for recruiting and retaining state employees be included in the final report for use by future Legislative Assemblies. Although the committee did not recommend implementation of the outlined items, some committee members suggested that the following points should be emphasized to ensure successful recruitment and retention of state employees:

1. Programs to retain key long-term employees including:
  - a. Career development and training programs.
  - b. A competitive compensation plan.
  - c. A work and family benefits program.
2. A compensation plan to provide methods for a state employee to advance in a salary range.
3. A compensation plan containing an appropriate mixture of salaries and fringe benefits.
4. A compensation plan that includes a review of the salaries received by high-paid employees.

The committee recommends Senate Concurrent Resolution No. 4001, which expresses legislative support for state employees, and urges each branch of state government to give priority to the recruitment,

training, and retention of valuable state employees. The resolution states that the Legislative Assembly urges each branch of state government to plan and budget for adequate training and career development for state employees. The committee recommends the resolution because of the pressure to improve state government while maintaining or reducing the number of state employees. If the number of state employees is reduced, it is important to retain well-trained state employees in order to perform duties with fewer staff. Another reason cited for providing employee training and career development is to provide a means for employee advancement.

The committee recommends Senate Bill No. 2025 to require the director of the Central Personnel Division to develop a comprehensive plan to be presented to the 54th Legislative Assembly for the recruitment, career development, and retention of state employees. The bill provides for the director of the Central Personnel Division to seek the assistance of a task force consisting of members of the general public and representatives of state employees. The bill provides a \$5,000 general fund appropriation to the director of the Central Personnel Division for development of the plan. The committee recommends the bill because a skilled corps of state employees is important for providing quality government services.

The committee recommends House Bill No. 1022 to provide a \$50,000 general fund appropriation to the Office of Management and Budget for providing state employees opportunities for job skills enhancement, access to new technologies, and career development programs. The bill provides that moneys can be spent for these purposes from providers other than state agencies or institutions only when the services cannot be provided or purchased from a state agency or institution. The committee recommends the bill in order to provide employee groups within state employment access to new technologies, job skills enhancements, and career development programs. Access to these programs is intended to improve state employee skills and provide for the skills necessary to handle advanced technology.

**STATE FLEET SERVICES**

**Background**

House Bill No. 1167, Section 7, directed a study to determine if vehicles used by the Board of Higher Education and agencies under its jurisdiction should be required to be under the control of the Department of Transportation central vehicle management system. The study was to determine if merging the motor pools would result in more efficiency and more uniform use of vehicles.

The committee reviewed background information on the higher education motor pools and the central vehicle management system. The information included the central vehicle management system costs and the higher education motor pool costs. The central vehicle management system has approximately 1,725 vehicles and the North Dakota University System has approximately 800 vehicles. The total 1989-91 costs for the central vehicle management system were \$13.2 million and for the University System, \$3.2 million. The central vehicle management system has eight district offices in Bis-

marck, Fargo, Dickinson, Williston, Minot, Grand Forks, Valley City, and Devils Lake.

The North Dakota University System has vehicles located at each of the institutions of higher education.

### **Findings**

The committee toured the University of North Dakota's Transportation Department facilities and the State College of Science's motor pool facilities. The committee received testimony that the institutions of higher education motor pool facilities are designed to primarily accommodate student needs as quickly as possible. Higher education representatives reported that the management of the higher education motor pool needs to be at a campus level in order to meet the needs for the use of all the various vehicles on a timely basis. The committee also heard testimony stating that bringing the higher education motor pools under the control of the central vehicle management system would not reduce the need of the existing transportation building facilities or the number of employees.

The committee reviewed information from a task force that was created in the fall of 1990 and that consists of representatives of the Board of Higher Education, the Department of Transportation, the State University System, and the Office of Management and Budget. The task force was formed at the direction of the management of these agencies to review information regarding the motor pools. As a result of the task force findings, the Department of Transportation and the North Dakota University System signed an agreement on August 15, 1991, to provide for maximum and efficient use of vehicles, service facilities, personnel, and other resources of each organization. The committee received status reports on the implementation of this agreement. The status reports indicated that, as of October 1, 1992, the joint fueling of vehicles at the North Dakota University System and the central vehicle management system sites had been implemented. The joint fueling agreement will provide cost savings for university system entities that currently do not have bulk fuel purchasing capabilities. The university system will utilize a universal credit card that can be used at both the central vehicle management system sites and the university system sites. It was reported that cooperation is also taking place for vehicle purchases and disposal.

### **Recommendation**

The committee recommends that the North Dakota University System and the Department of Transportation's central vehicle management system cooperate to provide for maximum and efficient use of vehicles, service facilities, personnel, and other motor pool resources. The committee was informed that through cooperation maximum efficiency can be achieved while still allowing each institution to have ownership of its vehicles. Cooperative efforts are taking place in the following areas:

- Joint fueling
- Vehicle purchases
- Vehicle disposal
- Vehicle rental
- Speciality vehicles
- Vehicle maintenance

Since it was indicated that combining the two motor pools would not reduce the need at each institution for service facilities or personnel, the committee does not recommend coownership of vehicles and facilities.

## **REPORTS ON PAY EQUITY**

### **Background**

The committee was assigned responsibility to receive reports on implementation of the state's pay equity policy and on the Office of Management and Budget's progress in determining necessary pay adjustments. House Bill No. 1035 passed by the 1989 Legislative Assembly provided that the Office of Management and Budget maintain a pay equity implementation fund for the period July 1, 1989, through June 30, 1993. The fund is used for establishing equitable compensation among all positions and classes within the state's classification plan and implementing hazardous conditions adjustments. The 1989 Legislative Assembly appropriated and transferred \$1,157,000 from the general fund to the pay equity implementation fund. (Due to budget allotments, the appropriation was reduced to \$1,059,715.) During the 1989-91 biennium, the Central Personnel Division developed a salary administration policy that identified the classes and pay grades in which pay equity increases were needed. As a result, pay equity increases were given in March 1991 retroactive to January 1, 1991, through use of the pay equity implementation fund. In addition, the 1991 Legislative Assembly appropriated \$1,361,762 from the general fund for pay equity adjustments in agency appropriation bills to continue the January 1, 1991, pay equity increases.

The 1991 Legislative Assembly passed House Bill No. 1023 which appropriated \$2 million in special funds to the Emergency Commission for special fund pay equity adjustments during the 1991-93 biennium and also provided that any moneys in the pay equity implementation fund can be disbursed for adjustments for employees compensated from the state general fund. The \$2 million special fund spending authority and the pay equity implementation fund are used for additional ongoing requests for pay equity increases including hazardous pay adjustments. The \$2 million appropriation is for agencies that have special funds available for pay equity increases and the pay equity implementation fund is for employees whose salaries are funded from the general fund.

### **Findings**

The Central Personnel Division of the Office of Management and Budget reported the following action:

- Through September 30, 1992, \$830,329 has been distributed from the pay equity implementation fund leaving a fund balance of \$229,386. The Central Personnel Division estimates that the June 30, 1993, fund balance will be \$200,000. Through October 1992, no increases have been approved for pay equity increases from the \$2 million special fund appropriation.
- Salary administration rules have been adopted and are reflected in North Dakota Administrative Code Chapter 4-07-02.

- Pay grade increases and salary adjustments were announced in March 1991, retroactive to January 1, 1991. As a result of the adjustments, nearly 100 classes experienced grade increases, approximately 750 classified employees received pay equity increases, and employees in 47 agencies were affected.
- The Central Personnel Division revised and implemented the working condition hazards factor as of May 1, 1992. A total of 151 job classes had points added to their class evaluation totals due to the revised hazards factor and 60 job classes will be moved up to the next pay grade. One class will be moved up two pay grades. A total of 1,399 employees are affected and salary increases of five percent were provided effective July 1, 1992.
- A North Dakota University System committee reviewed and applied the hazards factor to classes that are used exclusively within the institutions of higher education.
- The hazards factor, as of September 30, 1992, had been applied to classes that include approximately 3,500 positions and 1,600 employees. A total of \$639,267 was transferred from the pay equity implementation fund to the respective agencies to implement the hazards factor.
- The Central Personnel Division reported that, because all classified employees must be under one classification plan as of June 30, 1993, further work needs to be done for guidelines to handle exceptions to the rules of the classification and compensation plans for positions that are particularly sensitive to employment market conditions.

### Conclusion

The committee accepted the report of the Central Personnel Division on its progress in implementing the state's pay equity policy and in determining necessary pay equity adjustments.

## MONITORING THE STATUS OF APPROPRIATIONS

### Background

Since the 1975-76 interim, a Legislative Council interim committee has been assigned the responsibility of monitoring the status of major state agency and institution appropriations. The Budget Committee on Government Finance was assigned this responsibility for the 1991-92 interim. The committee's review focused on the expenditures of major state agencies, including the institutions of higher education and the charitable and penal institutions, the appropriations for the foundation aid program, and the

appropriations for the Department of Human Services aid to families with dependent children (AFDC) and medical assistance. The committee also heard a Legislative Council report on agency compliance with legislative intent for the 1991-93 biennium.

### Status of Appropriations of Major Agencies

To assist the committee in fulfilling its responsibility of monitoring the status of major appropriations, the Legislative Council staff prepared periodic 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. Overview of utility expenditures at the higher education and charitable and penal institutions.
4. Foundation aid program payments.
5. Medical assistance and AFDC payments.

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

1. For the period July 1, 1991, through July 31, 1992, the general fund expenditures for AFDC and medical assistance totaled \$62.1 million, or approximately \$1.1 million less than the estimate of \$63.2 million. However, it was reported to the committee that because of a decrease in the federal matching percentage that applies to the AFDC and medical assistance programs, there is the potential of a general fund deficiency appropriation request. (Later in the report is information on the Department of Human Services general fund deficiency request.) The estimated general fund deficiency request is \$1.3 million. The deficiency request is due mainly to a less than estimated AFDC and medical assistance programs federal matching percentage. The revised estimate for the federal fiscal year is 72.21 percent or 1.51 percent less than the original estimate of 73.72 percent.
2. The 1991 Legislative Assembly appropriated \$381.01 million from the state general fund for foundation aid program payments during the 1991-93 biennium. The \$381.01 million appropriated amount was reduced by \$680,972, to \$380.33 million, due to the June 1992 budget allotments resulting from revised general fund revenue estimates. Due to the budget allotments and to higher than projected weighted units, the second-year per-pupil payment was reduced by a total of \$61, from \$1,608 to \$1,547. The following is a schedule on per-pupil payments, tuition fund payments, and weighted units for each year of the biennium:

|                       | Estimates<br>for<br>1991-92 | Actual<br>Payments<br>for<br>1991-92 | Estimates<br>for<br>1992-93 | Adjusted<br>Estimates<br>for<br>1992-93 |
|-----------------------|-----------------------------|--------------------------------------|-----------------------------|---|
| Per-pupil payments    | \$1,552                     | \$1,552                              | \$1,608                     | \$1,547                                 |
| Tuition fund payments | <u>197</u>                  | <u>199</u>                           | <u>198</u>                  | <u>198</u>                              |
| Total payments        | <u>\$1,749</u>              | <u>\$1,751</u>                       | <u>\$1,806</u>              | <u>\$1,745</u>                          |
| Weighted units        | 122,400                     | 124,974                              | 122,400                     | 124,930                                 |

3. Total expenditures at the institutions of higher education for the first year of the 1991-93 biennium were \$196.8 million, \$6.5 million less than the estimated expenditures of \$203.3 million. Total income for the same institutions for the same time period was \$77,643,052, which is \$277,039 more than the estimated income of \$77,366,013. In total, the possible state general fund fiscal impact was a positive \$6.8 million; however, the \$6.8 million includes major improvement variances of \$3.3 million which, because of delays, is anticipated to be spent during the second year of the biennium.
4. Total expenditures at the charitable and penal institutions for the first year of the 1991-93 biennium were \$67.7 million, \$4.8 million less than estimated expenditures of \$72.5 million. Total revenues for the same period were \$29.6 million, \$1.7 million less than estimated revenues of \$31.3 million. The total possible state general fund fiscal impact was a positive

\$3.2 million; however, the \$3.2 million includes major improvement variances of \$948,082 which, because of delays, is anticipated to be spent during the second year of the biennium.

5. Utility expenditures at the higher education institutions for the first year of the 1991-93 biennium were \$9.1 million, \$1.5 million less than estimated utility expenditures of \$10.6 million. The actual utility expenditures at the charitable and penal institutions for the first year of the 1991-93 biennium totaled \$1.9 million, \$315,329 less than estimated expenditures of \$2.3 million.
6. The population, enrollments, and FTE positions for fiscal year 1992 at the State Hospital and Developmental Center at Grafton were less than estimated. The estimated average monthly populations and FTE positions for 1992 at the Developmental Center at Grafton and State Hospital were as follows:

| <b>Institution</b>                  | <b>Estimated or Authorized</b> | <b>Actual</b> | <b>(Over) Under</b> |
|-------------------------------------|--------------------------------|---------------|---------------------|
| Developmental Center at Grafton:    |                                |               |                     |
| Average monthly student population  | 220.00                         | 203.25        | 16.75               |
| Average monthly FTE positions       | 740.70                         | 715.70        | 25.00               |
| State Hospital:                     |                                |               |                     |
| Average monthly resident population | 270.00                         | 266.50        | 3.50                |
| Average monthly FTE positions       | 667.50                         | 645.80        | 21.70               |

### **Recommendation**

The committee recommends that the Legislative Council staff prepare budget monitoring reports for the first 18 months of the 1991-93 biennium and present the reports to the 1993 Legislative Assembly Appropriations Committees. The committee believes the Appropriations Committees would benefit from the information on revenues and expenditures as they develop the 1993-95 budget for the state.

### **Status of the State General Fund**

The Budget Committee on Government Administration and the Budget Section heard reports by the Office of Management and Budget regarding the status of the state general fund. Please refer to the Budget Section report for a summary of the Office of Management and Budget reports.

### **Agency Compliance with Legislative Intent**

The Legislative Council staff prepared a report on state agency compliance with legislative intent for the 1991-93 biennium. Copies of the report are on file in the Legislative Council office. The report is based on the Legislative Council staff analysis including visitations with agency administrators regarding compliance with legislative intent included in the agencies' 1991-93 appropriations. The report also includes changes made to agency operations since the beginning of the 1991-93 biennium, budget concerns, staffing changes, the status of selected state special funds, higher education enrollments, tuition costs, operating costs per student, and possible deficiency appropriation requests. The following is a schedule of the estimated potential general fund deficiency appropriation requests as reported by the various agencies:

### **Estimated General Fund Deficiency Appropriation Request**

|                                  |                            |
|----------------------------------|----------------------------|
| Department of Human Services     | \$ 1,278,263               |
| Department of Public Instruction | 8,000,000                  |
| School for the Blind             | 250,000                    |
| Secretary of State               | 569,000*                   |
| Administrative Hearings Officer  | 31,575                     |
| <b>Total</b>                     | <b><u>\$10,128,838</u></b> |

\* It is not yet known how much of this request will be from the general fund or special funds.

The reasons for the deficiency requests are as follows:

### **Department of Human Services**

- A reduction in the federal matching percentages that apply to AFDC and medical assistance programs. The percentages were projected to be 70 percent through September 1991, 72.75 percent through September 1992, and 73.72 percent through July 1993. Early estimates indicate the actual federal fiscal year 1993 percentage will be 72.21, or 1.51 percent less than estimated. The matching reduction is an estimated general fund loss of \$2.7 million. With savings and adjustments in other areas the estimated general fund deficiency approaches \$1.3 million.
- The following are the estimated (deficiencies) or savings for the 1991-93 biennium:

|                          | State General Fund   | Federal               | County               | Other              | Total                 |
|--------------------------|----------------------|-----------------------|----------------------|--------------------|-----------------------|
| AFDC basic               | \$ 393,885           | \$ 3,034,260          | \$ (13,115)          | \$1,660,129        | \$ 5,075,159          |
| Medicaid                 | (6,197,417)          | (12,667,588)          | (1,019,682)          | (355,965)          | (20,240,652)          |
| Developmental disability | 4,525,269            | 591,041               | (133,821)            | 0                  | 4,982,489             |
| Total                    | <u>\$(1,278,263)</u> | <u>\$ (9,042,287)</u> | <u>\$(1,166,618)</u> | <u>\$1,304,164</u> | <u>\$(10,183,004)</u> |

### Department of Public Instruction

- The number of weighted units used as the basis for the 1991-93 foundation aid appropriation was inappropriately low.
- The enrollments for grades 1 through 12 in North Dakota public schools grew by over 850 students during the 1991-92 school year. The Department of Public Instruction did not anticipate this growth in the enrollment projections.
- The allotment of \$680,972 made by the Governor resulted in an additional reduction in the funds available for distribution to school districts.

The Legislative Council's interim Education Committee has recommended a bill to the Legislative Council that would provide a \$8 million general fund deficiency appropriation for foundation aid. The \$8 million is proposed to be funded by a temporary one-cent sales tax increase.

### School for the Blind

- The deficiency appropriation of \$250,000 is necessary to continue the School for the Blind current services from February 1993 through the end of the 1991-93 biennium. The reason for the deficiency appropriation is the ineligibility for Title XIX funds. In order to receive the Title XIX funding the School for the Blind would have to provide full-time service which is for 12 months of the year and seven days a week. The School for the Blind is not structured at the present time for this type of service.

### Secretary of State

- Added microfiche distribution costs for distributing lists of liens. New federal regulations require enhanced distribution of the lists. The federal regulations were unanticipated and not budgeted for. \$ 70,000
- Added computer hardware costs. The Secretary of State reported that the state's Information Services Division (ISD) indicated a new computer system could be purchased as part of a state agency consortium and paid for over more than one biennium. It now appears that the entire cost of the new system's hardware must be paid during 1991-93. \$212,000
- Added unanticipated, but now required, programming costs to design the Uniform Commercial Code filing system. \$287,000
- Total \$569,000

The Emergency Commission on October 29, 1992, authorized the Secretary of State to spend an additional \$450,000 from other funds (income) to help avoid the potential deficiency of \$569,000.

### Office of Administrative Hearings

- An estimated \$31,575 is necessary to provide funding for current operations through the end of the 1991-93 biennium. The Office of Administrative Hearings revenue for funding its other funds appropriation will not be at the level contained in the 1991-93 appropriation. This revenue is from the agency's billings for services.

### TOUR GROUPS

The committee conducted a tour of the University of North Dakota's Transportation Department facilities and a budget tour of Fort Ransom State Park, the North Dakota Veterans Home, the Bagg Farm, the State College of Science, and Bismarck State College. On the tours, the committee heard of institutional needs for capital improvements and any problems the institutions or other facilities may be encountering during the interim.

### OTHER COMMITTEE ACTION

#### Fuel Price and Oil and Gas Tax Revenue Risk Management Programs

The committee recommends House Bill No. 1023 to authorize the state to enter fuel price risk management contracts and oil and gas tax revenue risk management contracts. The bill provides that the Office of Management and Budget may contract for a fuel price risk management program on behalf of the state agency or institution that purchases fuel. The risk management may consist of a plan designed to offset increased costs to the state if the price of the fuel rises above a selected price.

House Bill No. 1023 also authorizes the State Investment Board to contract for oil and gas tax revenue risk management upon the request of the director of the Office of Management and Budget and upon approval of the Budget Section. The risk management would be a plan designed to offset potential reduced state general fund oil and gas tax revenues due to oil and gas prices falling below selected levels. House Bill No. 1023 will need an accompanying appropriation to provide for payments to an investment firm in the event that fuel, oil, or gas prices are higher than anticipated.

Oil and gas tax risk management programs include a fuel (oil) price swap, fuel (oil) price floor, and fuel (oil) price collar. Following are descriptions of the oil price swap, oil price floor, and oil price collar programs:

- An oil price swap allows a contracting party to lock in the price level for oil. An oil price swap is a financial contract between two parties that has payouts equal to the difference between a predetermined fixed price and the current prevailing spot prices.
- An oil price floor is an agreement between a contracting party and a brokerage firm of a minimum selling price. An oil price floor allows a party to protect itself against the effects of unforeseen price decreases while capturing the

benefits of rising prices.

- An oil price collar allows a contracting party to establish a floor and a cap. Fuel price collaring assures that the price of oil will move within a predetermined range.

The committee reviewed the following schedule on the effects a risk management program would have had for fiscal year 1992 if a contract would have been entered into on October 31, 1990, when oil prices were near their highest for the year.

**ESTIMATED IMPACT OF OIL AND GAS TAX REVENUE  
RISK MANAGEMENT PROGRAMS FOR FISCAL YEAR 1992**

| Contract Date   | Oil Price Swap Contract (\$25.10) <sup>1</sup>                | Oil Price Floor Contract (\$20.00) <sup>1</sup>   | Oil Price Floor Contract (\$25.00) <sup>1</sup>   | Oil Price Collar Contract (Floor \$20.00; Cap \$30.00) <sup>1</sup> |
|---|---|---|---|---|
| October 31, 1990 (New York Mercantile quoted price as of October 31, 1990, \$35.23) | \$15.3 million in added revenue received from brokerage party | Net cost of \$4.9 million; an annual premium cost of \$6 million while receiving revenue of \$1.1 million from brokerage party payments | Net increase of \$1.3 million; annual premium costs of \$13.6 million while receiving revenue of \$14.9 million from brokerage party payments | \$1.1 million in added revenue received from brokerage party        |

<sup>1</sup> The above schedule is based on the prices quoted on the New York Mercantile Exchange Market per the First National Bank of Chicago.

Although the October 31, 1990, oil price swap agreement would have provided \$15.3 million in added general fund revenue for fiscal year 1992, the actual tax collections when added to the \$15.3 million received from the brokerage party would still have been \$3.4 million less than estimates based on a November 1990 forecast. The actual state general fund oil and gas tax revenues for fiscal year 1992 totaled \$42,033,500 compared to the March 1991 Wharton Econometric Forecasting Associates (WEFA) estimated total of \$50,960,000 and the November 1990 WEFA estimated total of \$60,707,000.

The March 1991 forecasts adopted by the 1991 Legislative Assembly estimated that 1991-93 general fund oil and gas tax revenues would be \$105.7 million. Revised 1991-93 biennium revenue forecasts made in June 1992 estimate that the general fund oil and gas tax revenues will be \$85.7 million or \$20 million less than the original estimate.

The following are the December 1990 quarterly estimated prices and the actual average quarterly Amoco posted field prices for a barrel of North Dakota sweet crude oil for fiscal year 1992:

**Quarterly Oil Prices**

|                              | July-September 1991 | October-December 1991 | January-March 1992 | April-June 1992 |
|------------------------------|---------------------|-----------------------|--------------------|-----------------|
| WEFA December 1990 estimate  | \$23.92             | \$24.44               | \$23.95            | \$22.73         |
| Actual average posted prices | \$19.83             | \$19.88               | \$17.17            | \$19.59         |

**State Travel Costs**

The committee received a report on the 1989-91 biennium state travel costs. The report included the travel costs for each state agency during the 1989-91

biennium. For the 1989-91 biennium, of the total state budget of \$2.9 billion, \$22.5 million was spent for state travel costs.



# BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Budget Committee on Government Services was assigned six studies. House Concurrent Resolution No. 3001 directed the Legislative Council to monitor the continued development of a continuum of services to the mentally ill and chemically dependent, including expanded community services and related changes in the role of the State Hospital. Senate Concurrent Resolution No. 4065 directed a study of additional programs that could be implemented by the State Hospital and alternative uses for the facilities of the State Hospital. Senate Concurrent Resolution No. 4003 directed a study of privatization of some state government services. House Concurrent Resolution No. 3065 directed a study of privatization in contracting for services by the Department of Human Services to provide services that the department is obligated to provide. Senate Concurrent Resolution No. 4053 directed a study of the feasibility and desirability of the Department of Human Services contracting with the private sector for the treatment of alcohol and drug dependent persons. Senate Bill No. 2001, approved by the 1991 Legislative Assembly, directed the State Auditor to conduct performance reviews of divisions or programs of the Department of Human Services as requested by Legislative Council interim committees. The committee asked the State Auditor to conduct a performance review of alcohol and drug abuse treatment services provided by the Department of Human Services and to comment on the potential for further privatization of the services. The chairman of the Legislative Council directed the committee to conduct a study of child care services provided by state agencies and institutions and to determine the extent to which state agencies and institutions should be involved in providing child care services for children of their students or employees. In addition, the chairman of the Legislative Council expanded the state agency child care services study to include a study of the North Dakota child care financing system to determine ways for the state to maximize the use of federal funds available to North Dakota for child care.

Committee members were Senators Larry J. Robinson (Chairman), Bill L. Bowman, Meyer Kinnoin, Dale Marks, David E. Nething, and Russell T. Thane and Representatives Rex R. Byerly, Sarah Carlson, Lyle L. Hanson, Roxanne Jensen, Rod Larson, Clarence Martin, Clara Sue Price, Cathy Rydell, W. C. Skjerven, Al Soukup, Harold N. Trautman, and Janet Wentz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## MONITORING SERVICES FOR THE MENTALLY ILL AND CHEMICALLY DEPENDENT

House Concurrent Resolution No. 3001 directed the Legislative Council to monitor the continued development of a continuum of services to the mentally ill and chemically dependent, including expand-

ing community services and related changes in the role of the State Hospital. The resolution states that any proposed changes and the extent to which adequate community services are available should be reviewed including the related fiscal impact for the 1993-95 biennium.

### Background

The 1991 Legislative Assembly appropriated \$2.8 million, \$2 million of which was from the general fund, for 14 seriously mentally ill program enhancements for the 1991-93 biennium.

The following schedule compares the number of seriously mentally ill persons served at the regional human service centers during the 1989-91 biennium and the first year of the 1991-93 biennium:

| Regional Human Service Center | 1989-91 Biennium    |                     | 1991-93             |
|-------------------------------|---------------------|---------------------|---------------------|
|                               | FY 1990             | FY 1991             | FY 1992             |
| Northwest                     | 228                 | 257                 | 326                 |
| North Central                 | 308                 | 364                 | 394                 |
| Lake Region                   | 136                 | 172                 | 179                 |
| Northeast                     | 371                 | 415                 | 471                 |
| Southeast                     | 707                 | 704                 | 739                 |
| South Central                 | 482                 | 506                 | 498                 |
| West Central                  | 438                 | 389                 | 430                 |
| Badlands                      | 208                 | 212                 | 222                 |
| <b>Total</b>                  | <b><u>2,878</u></b> | <b><u>3,019</u></b> | <b><u>3,259</u></b> |

### Community Services

The Department of Human Services presented status reports at each committee meeting regarding the implementation of community services for the mentally ill and chemically dependent. Regional human service center directors testified on the implementation of these services and expressed concern that:

1. Human service centers have no control over the number of involuntary admissions to the State Hospital from each region.
2. Qualified staff members are difficult to recruit and retain.

The committee reviewed the regional intervention service system at the regional human service centers and learned that the funding needed to continue the development of the regional intervention service systems for the 1993-95 biennium totals \$3,876,823, which is \$1,767,602 more than the funding provided during the 1991-93 biennium of \$2,109,221. Moneys other than general fund moneys may not be available to help finance the proposed increase.

The committee learned that although the 1991 Legislative Assembly appropriated funding to the northeast and southeast human service centers for eight-bed long-term residential facilities, the centers are proposing to serve more clients by implementing a program that would provide individual apartments for clients suffering from severe mental illness and severe mental illness and chemical dependency. The centers would provide necessary care and support

services to assist these individuals in maintaining their independence in the community.

The committee received other reports from the Department of Human Services including reports on other requested human service center increases for the 1993-95 biennium and on the estimated impact on community services for the mentally ill and chemi-

cally dependent if a 90 percent funding level is approved for the 1993-95 biennium.

The Department of Human Services, at the committee's last meeting, presented its 1993-95 budget request compared to the 1991-93 budget for major programs for the seriously mentally ill at the regional human service centers as follows:

|  | Northwest   | North Central | Lake Region | Northeast   | Southeast   | South Central | West Central | Badlands    | Total        |
|--|-------------|---------------|-------------|-------------|-------------|---------------|--------------|-------------|--------------|
| 1993-95 total funds request              | \$2,754,395 | \$2,553,418   | \$1,203,639 | \$4,431,476 | \$4,356,966 | \$4,004,286   | \$4,330,422  | \$2,228,271 | \$25,862,873 |
| 1991-93 total appropriation              | 2,018,716   | 1,916,319     | 1,037,896   | 2,623,661   | 2,376,046   | 2,331,601     | 3,087,000    | 1,649,650   | 17,040,889   |
| Requested increase (decrease)            | \$ 735,679  | \$ 637,099    | \$ 165,743  | \$1,807,815 | \$1,980,920 | \$1,672,685   | \$1,243,422  | \$ 578,621  | \$ 8,821,984 |
| 1993-95 general fund request             | \$1,854,141 | \$1,272,075   | \$ 772,872  | \$3,162,035 | \$2,358,221 | \$3,221,061   | \$2,838,094  | \$1,616,589 | \$17,095,088 |
| 1991-93 general fund appropriation       | 1,093,606   | 1,642,038     | 567,667     | 1,739,677   | 1,087,909   | 1,244,359     | 1,514,665    | 713,072     | 9,602,993    |
| Requested increase (decrease)            | \$ 760,535  | \$ (369,963)  | \$ 205,205  | \$1,422,358 | \$1,270,312 | \$1,976,702   | \$1,323,429  | \$ 903,517  | \$ 7,492,095 |
| Requested FTE increase (decrease)        | 0.00        | 2.00          | 1.00        | 8.00        | 19.25       | 24.00         | 3.00         | 5.00        | 62.25        |
| Requested program increases (decreases): |             |               |             |             |             |               |              |             |              |
| Partial care                             | \$ 24,995   | \$ 16,163     | \$ 0        | \$ 2,764    | \$ 27,432   | \$ 17,383     | \$ 1,841     | \$ 4,994    | \$ 95,572    |
| Residential services                     | 273,176     | 39,223        | 0           | 161,347     | 297,142     | (37,562)      | 48,923       | 13,383      | 795,632      |
| Homeless                                 | 18,459      | 9,792         | 14,791      | 10,998      | 7,835       | 3,456         | 10,344       | 16,952      | 92,627       |
| State Hospital downsizing                | 0           | 468,234       | 85,197      | 1,085,951   | 1,086,612   | 1,364,248     | 984,700      | 66,808      | 5,141,750    |
| Voluntary admissions                     | 0           | 23,285        | 3,954       | 20,847      | 31,230      | 87,871        | 0            | 75,259      | 242,446      |
| Community development                    | 176,095     | 40,150        | 0           | 14,637      | 0           | 22,198        | 0            | 50,000      | 303,080      |
| Staff services                           | 28,526      | 8,600         | 11,690      | 368,513     | 380,230     | 187,174       | 116,156      | 197,996     | 1,298,885    |
| Transitional/supported employment        | 0           | 0             | 0           | 11,915      | 0           | 0             | 0            | 118,038     | 129,953      |

|                                     | Northwest  | North Central | Lake Region | Northeast    | Southeast    | South Central | West Central | Badlands   | Total        |
|-------------------------------------|------------|---------------|-------------|--------------|--------------|---------------|--------------|------------|--------------|
| Medical director/psychiatrists      | 214,428    | 31,652        | 50,111      | 130,843      | 150,439      | 27,917        | 81,458       | 35,191     | 722,039      |
| Total requested increase (decrease) | \$ 735,679 | \$ 637,099    | \$ 165,743  | \$ 1,807,815 | \$ 1,980,920 | \$ 1,672,685  | \$ 1,243,422 | \$ 578,621 | \$ 8,821,984 |

The funds requested for the 1993-95 biennium do not include any funds for salary or fringe benefit increases that may be provided for state employees.

The Department of Human Services provided information regarding regional mental health and addiction service needs that are not included in the department's 1993-95 budget request due to budget-

ing guidelines that required the centers to limit their requested increases. The following schedule presents a summary of centers' needs that are not included in the 1993-95 budget request:

| Human Service Center | Additional Service Needs  | Estimated Cost            |
|----------------------|---|---------------------------|
| Northwest            | 1 FTE social worker for family therapy and adult mentally ill   | \$ 74,256                 |
|                      | Additional psychiatric services   | 200,000                   |
|                      | Outreach  | 74,256                    |
|                      | 3 FTE social workers for children   | 222,768                   |
|                      | 4 FTE case managers   | 270,068                   |
|                      | 1 FTE activity therapist  | 67,517                    |
|                      | Additional inpatient mental health and addiction services   | 404,000                   |
|                      | <b>Total</b>  | <b><u>\$1,312,865</u></b> |
| North Central        | Restructure transitional living facility and provide alternative crisis beds                            | \$ 272,118                |
|                      | Additional psychiatric services   | 83,200                    |
|                      | <b>Total</b>  | <b><u>\$ 355,318</u></b>  |
| Lake Region          | Additional residential services (6 to 8 beds)(\$198,000 - \$280,000)                                    | \$ 198,000                |
|                      | Psychological services (Rolla)  | 35,000                    |
|                      | 1 FTE social worker III   | 65,000                    |
|                      | <b>Total</b>  | <b><u>\$ 298,000</u></b>  |
| Northeast            | Clubhouse project   | 258,450                   |
|                      | Residential services (8 beds) for dually diagnosed individuals (mental illness and mental retardation)  | 440,000                   |
|                      | Residential services (4 beds) for dually diagnosed individuals (mental illness and chemical dependency) | 240,000                   |
|                      | Expand mentally ill homeless services   | 47,926                    |
|                      | <b>Total</b>  | <b><u>\$ 986,376</u></b>  |

| <b>Human Service Center</b> | <b>Additional Service Needs</b>   | <b>Estimated Cost</b>     |
|-----------------------------|---|---------------------------|
| Southeast                   |   | None                      |
| South Central               | Increase Rhinelander volunteers   | <u>\$ 7,680</u>           |
| West Central                | Residential services (6 beds) for emotionally disturbed late adolescents/young adults | \$ 333,138                |
|                             | Additional money management services  | 21,374                    |
|                             | Additional medication assistance  | <u>10,000</u>             |
|                             | <b>Total</b>  | <b><u>\$ 364,512</u></b>  |
| Badlands                    | 0.5 FTE nurse   | \$ 33,418                 |
|                             | Additional staffing for crisis bed  | 12,000                    |
|                             | 1 FTE sexual abuse treatment specialist   | <u>80,182</u>             |
|                             | <b>Total</b>  | <b><u>\$ 125,600</u></b>  |
| <b>Statewide total</b>      |   | <b><u>\$3,450,351</u></b> |

### **State Hospital Review**

The 1991 Legislative Assembly appropriated \$53.5 million to the State Hospital for the 1991-93 biennium, \$39.3 million of which is from the general fund. The State Hospital is authorized 732.85 FTE positions and estimates an average daily population of 225 residents for the 1991-93 biennium. Representatives of the State Hospital presented information to the committee on State Hospital populations, funding, and future needs as follows:

1. The population at the State Hospital has ranged from 260 in September 1991 to 290 in September 1992, compared to an average population rate of 282 during the 1989-91 biennium.
2. State Hospital admissions have decreased in recent years as follows:
  - 1992 - 1,677
  - 1991 - 1,791
  - 1990 - 2,304
  - 1989 - 2,558
  - 1988 - 2,713
3. The 1991 Legislative Assembly appropriated \$1 million of federal funds per year to the State Hospital for funds received from Indian Health Service for providing treatment services to Native Americans. The State Hospital estimates it will receive \$877,000 from Indian Health Service for federal fiscal year 1991 and \$1 million in federal fiscal year 1992.
4. Projected needs of the State Hospital for the 1993-95 biennium include:
  - a. Moving auxiliary services to the basement of the Lahaug building which currently has unused space.

- b. Continue the demolition of old, unused, and unsafe buildings at the State Hospital.
  - c. Move administrative services closer to clinical services and replace the State Hospital's telephone switch.
  - d. Increase funding for training and professional clinical education for State Hospital staff.
  - e. Increase funding for the development of the interactive video network through which mental health care specialist training programs may be taught in all areas of the state.
  - f. Increase funding for basic care services because persons who might do very well in a basic care setting must now be placed in more expensive and more structured settings.
  - g. Increase funding for dually diagnosed persons (both developmental disability and mental illness). Currently approximately 25 long-term patients at the state hospital are dually diagnosed.
  - h. Increase funding for services for persons convicted of major crimes and who also suffer from mental illness.
5. The State Hospital estimates that for the period January through November 1990 it provided an estimated \$1 million worth of treatment services to Minnesota residents. Because Minnesota has no mental health care facility near the North Dakota-Minnesota border, Minnesota residents seek services at Fargo hospitals, and often, these persons are subsequently committed to the State Hospital. Because it is difficult to

transfer patients committed to a state hospital in one state to another state, the department is discussing options with Minnesota officials to allow Minnesota residents to be returned to Minnesota even if the person has been committed in North Dakota.

### **Tour Groups**

During the interim, the Budget Committee on Government Services functioned as a budget tour group of the Budget Section and visited the State Hospital, South Central Human Service Center, West Central Human Service Center, Southeast Human Service Center, Northeast Human Service Center, and mental illness and chemical dependency provider facilities to hear institutional needs for major improvements and problems institutions or other facilities may be encountering during the interim. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 1993 legislative session.

Regarding budget tours, the committee made the following recommendations:

1. That the tour group compliments the staff of the West Central Human Service Center, Southeast Human Service Center, and Northeast Human Service Center on their innovative and creative ideas, on programs being proposed and implemented at the human service centers, and on the heavy caseloads being administered by staff.
2. That any temporary positions at the human service centers which are actually permanent full-time positions be reflected as FTE positions in the centers' budgets.
3. That the Department of Human Services, within its appropriation for human service centers, be responsive to critical needs at individual human service centers to meet the needs of clients if other human service centers have resources available.

### **Other Reports**

The committee heard a report of the Advisory Council to the Federal Interagency Task Force on homeless persons with serious mental illness and learned that there are approximately 400 to 500 homeless mentally ill persons in various shelters in North Dakota.

The committee reviewed recommendations for state and local governments contained in the report including:

1. Promote system integration by establishing responsibilities among agencies, improving the planning of services, identifying gaps in services, encouraging collaboration between mental health and criminal justice systems, and coordinating various service programs.
2. Improve outreach and access to existing programs.
3. Expand housing options and alternative services.
4. Generate and disseminate knowledge and information.

The committee heard other reports from mental health advocacy groups, private providers, and cli-

ents on services for the mentally ill in North Dakota. Major needs expressed in the reports include:

1. Additional emergency intervention and support services.
2. Additional outreach services.
3. Additional case managers.

### **Recommendations**

The committee supports a proposed program that allows individuals with the dual diagnosis of severe mental illness and chemical dependency to live in individual apartments while individualized support services are provided to them by the regional human service centers. If this type of program is implemented, the committee encourages the Legislative Assembly to study the results of this program in future bienniums.

The committee recommends Senate Concurrent Resolution No. 4002 to direct the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, expanded community services, and the development of partnerships between the public and private sectors for providing alcohol and drug abuse treatment services. The directive to monitor the development of partnerships between the public and private sectors relates to the committee's recommendation resulting from its privatization study discussed later in this report.

### **ADDITIONAL STATE HOSPITAL USES STUDY**

Senate Concurrent Resolution No. 4065 directed a study of additional programs that could be implemented by the State Hospital and alternative uses for the facilities of the State Hospital. The resolution states that because more treatment is being provided to the mentally ill through community-based programs and better medications are being used to treat mentally ill persons, the State Hospital has experienced a decrease in its population. Although the State Hospital is required to be located in Jamestown and offer care and treatment to the mentally ill as provided in the state constitution, facilities at the State Hospital may be available to implement alternative programs, including programs for adolescents, persons suffering from head injuries, chemical dependency, or acquired immune deficiency syndrome (AIDS), or for use as a forensic hospital in addition to continuing to provide services for the mentally ill. The expanded use of the State Hospital facilities could result in additional services for North Dakota residents or additional revenue to the state by providing services to meet unmet regional or national needs.

### **Background**

The 1991 Legislative Assembly appropriated \$53.5 million to the State Hospital for the 1991-93 biennium, \$39.3 of which is from the general fund. The State Hospital is authorized 732.85 full-time equivalent (FTE) positions and estimates an average daily population of 225 residents for the 1991-93 biennium. The State Hospital is composed of 3,253 acres, 2,517 of which are pasture and farmland. The pasture and farmland acres are currently being leased

to private individuals.

The schedule below presents average historical, resident populations at the State Hospital:

|                  |       |
|------------------|-------|
| Fiscal year 1992 | 266.5 |
| 1989-91 biennium | 282   |
| 1987-89 biennium | 509   |
| 1985-87 biennium | 451   |
| 1983-85 biennium | 526   |
| 1981-83 biennium | 541   |

### **State Hospital Mission**

Two sections of the Constitution of North Dakota relate to the mission of the State Hospital—one provides for a state hospital for the insane at Jamestown and the other for a state hospital for the mentally ill. Although there is a constitutional requirement that there be a state hospital in Jamestown there does not appear to be any constitutional limitation on the services that might be provided at the institution as long as services for the mentally ill are provided.

Although several statutes relate to the State Hospital, only two relate specifically to the mission of the hospital. These sections are North Dakota Century Code Section 25-02-01, which is a statutory provision reflecting the constitutional requirements and Section 25-02-03, which spells out the mission of the State Hospital. The sections contain no language of limitation that would preclude other programs at the institution.

### **Space Available for Additional or Alternative Uses**

The committee reviewed the physical plant at the State Hospital and found that it is capable of serving up to 1,500 patients. The State Hospital is currently licensed for 336 beds and has fewer than 300 residents. Currently, the State Hospital's steam generating plant and laundry facility are major areas with excess capacity.

The committee reviewed facilities available at the State Hospital for additional or alternative uses including:

1. Building No. 15, built in 1928, consists of four stories containing 37,600 square feet. The building recently housed part of the chemical dependency unit and is now vacant. The State Hospital estimates the cost of renovating this building at \$1.2 million.
2. Building No. 6, built in 1916, consists of four stories and 47,600 square feet. The building, except for housing the Native American Culture Center, is vacant. The State Hospital estimates the cost of renovating this building at \$1.3 million.
3. Building No. 8, built in 1921, consists of four stories and 45,640 square feet. The building currently houses housekeeping, volunteer department, and the Hilltop Day Care Center. The State Hospital estimates the cost of renovating this building at \$1.4 million.
4. Building No. 70, built in 1952, consists of five stories containing 36,000 square feet. The building provides housing for some State Hospital employees. The State Hospital estimates the cost of renovating this building at \$550,000.

5. Building No. 80, built in 1956, consists of two stories containing 28,500 square feet. The building is used for a nursing residence. The State Hospital estimates the cost of renovating this building at \$560,000.

In addition, the committee learned that the extended treatment unit building, which was built in 1936, contains 120 beds which may become available for an alternative use in the future if the State Hospital population continues to decrease. With only minimal renovation, the committee learned that the building could house a psychiatric nursing home or other secondary health care facility.

### **Other States' Uses of Vacant State Hospital Facilities**

The committee reviewed examples of other states' uses of unused facilities at state institutions for the mentally ill. The committee learned that the most common use for vacant state hospital facilities is for correctional centers. The committee reviewed conversions of state hospital buildings for either minimum or medium security correctional centers in Minnesota, Iowa, Montana, and Nebraska.

The committee also reviewed leases of excess space at state hospitals in Minnesota, Iowa, and Nebraska and learned that these states lease excess space at their state hospitals to other state agencies and private profit and nonprofit groups. The leases in Minnesota and Nebraska are authorized by statute and even though no statute authorizes the leasing of space in Iowa, the Iowa Department of Human Services believes it has authority to enter into leases. The committee learned that legislation in Minnesota authorizes shared laundry services among institutions and the committee reviewed examples of shared laundry services in Nebraska although not specifically authorized by law.

### **North Dakota Legislation Authorizing Additional Uses of State Institution Property**

The committee reviewed the following provisions of law that authorize additional uses of state institutional property:

1. Senate Bill No. 2016 approved by the 1987 Legislative Assembly authorized the Director of Institutions to sell, lease, exchange, or transfer title or use any part or all of the San Haven facility and property for any worthy undertaking.
2. North Dakota Century Code Sections 25-04-01, 25-04-02, and 25-04-04 provide that the Developmental Center at Grafton be available to any person who may benefit from the facility's services.
3. North Dakota Century Code Section 50-06-06.7 provides for the sale of surplus steam heat by the Developmental Center at Grafton.
4. North Dakota Century Code Section 50-06-06.6 authorizes the director of the Department of Human Services to lease surplus farm and pasture land at the State Hospital and Developmental Center at Grafton and to lease other real or personal property of these institutions if the lease will result in a net economic gain for the department.

## Suggested Additional and Alternative Uses for the State Hospital

The committee reviewed the following suggestions made by committee members, the Governor, Department of Human Services, State Hospital, various interest groups, and individuals for additional or alternative uses for the State Hospital facilities:

1. Treatment services for brain-injured persons.
2. Native American treatment services.
3. Treatment services for Native American adolescents who are mentally ill.
4. Treatment services for AIDS patients.
5. Treatment services for persons with serious drug abuse.
6. General health care for indigent people.
7. Long-term residential treatment services for chronic alcoholics.
8. Forensic hospital services - converting the current forensic unit building to a forensic hospital.
9. Education services relating to:
  - a. Training of alcohol and drug counselors.
  - b. Certification and accreditation of alcohol and drug counselors.
  - c. Training of psychiatric nurses.
  - d. Training of nursing home managers and other providers that house or treat mentally ill patients.
  - e. Training and certification of psychiatrists.
  - f. Residences for mental health students, including nurses, doctors, managers, counselors, and other mental health care and treatment providers.
10. Public safety training facility.
11. Business incubator.
12. Office space for federal, state, or local governments.
13. Product center for makers of North Dakota products.
14. Treatment services for Alzheimer's patients.
15. Commercial space for private companies.
16. Minimum security correctional center.

The committee also reviewed alternative uses that were considered for the San Haven facility after its closure and major obstacles encountered in attempting to attract business to locate there.

### Other Reports

The committee heard status reports from the State Hospital on a long-term residential program for difficult to treat adolescents being developed at the State Hospital. The program began operations in August 1992, and serves eight residents on one wing of the present adolescent unit.

The committee reviewed current law and state institution practices regarding the sale of utility services. The committee learned that the 1991 Legislative Assembly authorized the Developmental Center at Grafton to sell surplus steam heat to the city of Grafton; however, the Developmental Center at Grafton does not anticipate selling any steam heat during the 1991-93 biennium. Although not specially authorized by law, the University of North Dakota, North Dakota State University, and North Dakota

State College of Science sell from eight to 20 percent of their steam heat production to other entities.

### Committee Action

The committee heard testimony from representatives of the State Hospital and other groups opposing the establishment of a correctional center on the State Hospital campus. The committee learned that housing criminals on the same campus as the mentally ill is not conducive to providing therapeutic care for persons suffering from mental illness.

The committee decided that its primary focus for alternative uses of excess State Hospital facilities would relate to health care services.

### Long-Term Residential Treatment Program for Chronic Alcoholics

The committee received status reports from the State Hospital on the development of a residential rehabilitation unit at the State Hospital. The unit will provide long-term residential treatment services for chronic alcoholics.

The committee learned that a group of approximately 30 persons suffering from alcoholism have been admitted to the State Hospital at least 200 times. The present system for treating these individuals is costly and is not effective. It costs an average of \$644 for each person prior to admission to the State Hospital and approximately \$758 for each person for the first three days after admission.

Research has shown that chronic alcoholic patients treated in long-term care facilities such as halfway houses and residential rehabilitation facilities have better outcomes than short-term treatment, outpatient treatment, or no treatment. The proposed program would provide treatment from six to 18 months involving intensive treatment followed by support services while the individual, when possible, works to pay for room and board. The State Hospital plans to use approximately 10 repeat noncriminal driving while intoxicated (DWI) offenders currently housed at the Missouri River Correctional Center or in county jails to assist in this program to reduce the program's staff costs and to further rehabilitate the DWI offenders.

The State Hospital estimates the following 1993-95 biennium costs for the residential rehabilitation unit:

|                             |                  |
|-----------------------------|------------------|
| Salaries and wages (12 FTE) | \$530,112        |
| Operating expenses          | <u>15,810</u>    |
| Total direct costs          | <u>\$545,922</u> |
| Indirect expenses:          |                  |
| Motor pool                  | \$ 4,440         |
| Meals                       | 87,922           |
| Telephone                   | 4,320            |
| Drugs                       | 6,000            |
| Health and beauty           | 3,200            |
| Laundry                     | 3,200            |
| Miscellaneous               | <u>5,000</u>     |
| Total indirect costs        | <u>\$114,082</u> |
| Grand total                 | <u>\$660,004</u> |

## PRIVATIZATION STUDY

The State Hospital estimates the daily rate for the program at \$116 which is approximately one-half the cost of the current rate in the chemical dependency unit. The State Hospital anticipates a waiting list for the program because no more than 10 DWI offenders would be allowed to work in the program at one time.

The committee heard a report from the Department of Corrections and Rehabilitation expressing support for the long-term care treatment program for chronic alcoholics at the State Hospital utilizing repeat DWI offenders. The department estimated approximately eight to 10 repeat DWI offenders are housed at the Missouri River Correctional Center who could serve in this program.

The committee reviewed the following statistics on the number of DWI convictions in North Dakota for the period January through August 1992 and the minimum prison sentence for each offense:

| Offense                      | Number | Minimum<br>Prison<br>Sentence |
|------------------------------|--------|-------------------------------|
| First offense in five years  | 2,370  | None                          |
| Second offense in five years | 608    | 4 days                        |
| Third offense in five years  | 105    | 60 days                       |
| Fourth offense in five years | 21     | 180 days                      |

### Considerations and Recommendations

The committee recognizes the need for a long-term care treatment program for chronic alcoholics in the state, supports the development of a residential rehabilitation unit for chronic alcoholics at the State Hospital, and encourages the Appropriations Committees to consider the funding request for the unit for the 1993-95 biennium.

Because courts currently have the option of ordering a person convicted of a repeat DWI offense to undergo inpatient treatment at an appropriate licensed addiction treatment program, the committee, in order to allow these persons to be ordered to undergo treatment services at the residential rehabilitation unit at the State Hospital, which would not be considered inpatient treatment, recommends House Bill No. 1024 to remove the restriction that court-ordered treatment services be only to inpatient facilities and allow treatment at any licensed addiction treatment program.

In order to utilize the excess capacity of the physical plant at the State Hospital, the committee considered a bill draft that permitted the State Hospital and Developmental Center at Grafton to sell services, including utility and laundry services subject to Budget Section approval based on the determination that the service is not otherwise being provided by either the private or public sectors.

Because of concerns that the State Hospital may sell services that compete with the private sector and because of possible negative effects on private sector business in Jamestown, the committee limited the bill draft to the Developmental Center at Grafton.

The committee, therefore, recommends House Bill No. 1025 to permit the Developmental Center at Grafton to sell services, including utility and laundry services, subject to Budget Section approval based on the determination that the service is not otherwise being provided by either the private or public sectors.

Senate Concurrent Resolution No. 4003 directed a study of privatization of some state government services. The resolution states that North Dakota is perceived as having a high number of state employees as compared to other states and that although North Dakota has contracted with the private sector for some public sector services, other states have privatized additional services which indicates potential opportunities for further privatization in North Dakota.

House Concurrent Resolution No. 3065 directed a study of privatization in contracting for services by the Department of Human Services to provide services that the department is obligated to provide. The resolution states that the study include a review of the current level of contracting by the Department of Human Services and the role of profit and nonprofit organizations in the provision of services.

Senate Concurrent Resolution No. 4053 directed a study of the feasibility and desirability of the Department of Human Services contracting with the private sector for the treatment of alcohol and drug dependent persons. The resolution states that licensed firms are available to provide alcohol and drug treatment services that the Department of Human Services currently provides and the department may have established alcohol and drug treatment programs without fully exploring the feasibility and desirability of contracting with existing private agencies for various services.

### Background

Privatization is the involvement of the private sector in providing services or facilities usually provided by the public sector and may be categorized as follows:

1. Contracts with the private sector to provide services.
2. Operation of facilities by the private sector.
3. Sale of certain government assets to the private sector.

The 1991 Legislative Assembly approved House Bill No. 1569 that provides that the Department of Human Services may contract with the private sector for the treatment of alcohol and drug dependent persons provided that the private organization meets the standards of operations established by the department.

### Privatization in Other States

The committee reviewed privatization legislation passed in other states, including Arizona, Colorado, Michigan, and Wisconsin. In addition, the committee reviewed examples of privatization in other states and found that the majority of states have experienced privatization of food services, building maintenance, janitorial services, legal services, architectural services, data processing, health and medical care, and highway construction.

### Privatization by State Agencies

The committee heard reports from the Department of Human Services, Department of Transportation, North Dakota University System, Parole and Probation, and the Workers Compensation Bureau on each



agency's current status of privatizing services and on services each agency currently provides that could potentially be privatized. Major items presented to the committee in the reports include:

1. During the 1989-91 biennium, the Department of Human Services contracted for \$509.2 million of services.
2. Major services privatized by the Department of Transportation include:
  - a. Highway construction projects.
  - b. Construction projects supervision.
  - c. Highway striping.
  - d. Bridge inspection.
3. Department of Transportation suggestions for areas of further privatization include:
  - a. Expanded use of engineering consultants.
  - b. Materials research.
  - c. Fleet Services vehicle maintenance.
4. Major services privatized at North Dakota's higher education institutions include:
  - a. Child care.
  - b. Major campus facility repairs.
  - c. Printing.
  - d. Student health services.
  - e. Campus housing laundry and dormitory cleaning.
  - f. Some food services programs.
5. North Dakota University System suggestions for areas of further privatization include:
  - a. Food services.
  - b. Physical plant operations, including custodial services.
  - c. Bookstores.
  - d. Dormitories.
6. Major services privatized by Parole and Probation include:
  - a. Presentence investigation work.
  - b. Psychiatric and psychological reports.
  - c. Computer programming.
7. Major services privatized by the Workers Compensation Bureau include:
  - a. Medical bill audits.
  - b. Utilization review of medical services.
  - c. Rehabilitation services.
  - d. Third-party administration.
  - e. Actuarial services.

### **Highway Project Engineering Services**

The committee heard reports from the Department of Transportation and the North Dakota Consulting Engineers Council regarding the potential additional use of private engineering firms on federally funded highway projects in North Dakota.

The committee learned that because of the additional federal funding available for state, county, and city highway and road construction projects under the 1991 federal Intermodal Surface Transportation Efficiency Act, there is potential for additional private sector involvement in highway construction projects.

In response to the committee's suggestion, the Department of Transportation and the North Dakota Consulting Engineers Council agreed on a memorandum of understanding regarding the use of consulting engineers for highway projects. In summary, the memorandum provides that:

1. The department will continue to increase proportionately the amount of federal dollars allocated to the state, cities, and counties at the same historical ratio as in previous federal highway acts.
2. Counties may continue to hire consulting engineers for preliminary, construction, and demonstration project engineering.
3. Cities may hire consulting engineers for urban roads program projects.
4. Consulting engineering work should more than double if Congress and the Federal Highway Administration support obligational limits near the appropriated levels of the 1991 federal highway act.
5. The department and the Consulting Engineers Council agree to continue to meet on a regular basis to discuss and develop significant additional private sector involvement in highway construction projects.

### **Privatization of Alcohol and Drug Abuse Treatment Services**

The committee heard reports from the Department of Human Services and the North Dakota Hospital Association regarding the potential privatization of alcohol and drug abuse treatment services in all regions of the state. The committee learned that the private sector is interested in increasing its cooperative efforts and expanding alcohol and drug abuse treatment services available to North Dakota citizens who require support of public moneys and that the department is willing to cooperate and facilitate increasing its contracting with the private sector for alcohol and drug abuse treatment services.

As a result of the committee's action, the Department of Human Services plans to meet with private alcohol and drug abuse treatment providers in North Dakota to discuss the most useful and cost-effective way to deliver services to individuals and families in North Dakota in order to improve the public/private partnership in providing alcohol and drug abuse treatment services in the state.

The committee expressed its support of the proposed meetings between the Department of Human Services and private alcohol and drug abuse treatment providers to develop and organize a public-private partnership for providing alcohol and drug abuse treatment services in the state.

### **Performance Review Audit of Alcohol and Drug Abuse Treatment Services**

#### **of the Department of Human Services**

Senate Bill No. 2001 approved by the 1991 Legislative Assembly directed the State Auditor to conduct, during the 1991-93 biennium, performance reviews of divisions or programs of the Department of Human Services as requested by Legislative Council interim committees. The committee asked the State Auditor's office to conduct a performance review of alcohol and drug abuse treatment services provided by the Department of Human Services and to comment on the potential for further privatization of these services.

The Auditor's office conducted the performance

review asked for by the committee and submitted a final report which included the following recommen-

dations for the Department of Human Services and the department's responses to the recommendations:

| <b>Recommendation</b>   | <b>Department of Human Services' Response</b>  |
|---|--|
| 1. Review and update North Dakota Administrative Code Article 33-08 to address changes in licensing addiction counselors.   | Agree  |
| 2. Accurately report financial data when requested for the National Drug and Alcohol Treatment Unit Survey (NDATUS) or other surveys.   | Agree  |
| 3. Develop and implement a system for collecting and analyzing information on clients leaving treatment, documenting length of stay and involvement of significant others, and conducting followup interviews with clients. Analyze and report the information to determine the effectiveness of treatment. | Agree, but expensive and services would be reduced   |
| 4. Conduct incidence and prevalence studies to assess the need for services.  | Agree, the department is implementing this type of system                                    |
| 5. Review and modify controls over the ratesetting process to assure accuracy, integrity, and compliance with applicable laws and regulations.  | Agree, the department is computerizing this process  |
| 6. Revise ratesetting instructions to assure standardization to facilitate reviews for accuracy and consistency.  | Agree  |
| 7. Allocate administrative costs to contracts.  | Agree  |
| 8. Revise therapy rates for alcohol and drug clients to reflect actual costs.   | Disagree, the department has standardized costs for the eight regional human service centers |
| 9. Establish therapy rates for alcohol and drug services by service category consistent with the way rates are charged for the intensive addiction programs.  | Disagree, the department has standardized costs for the eight regional human service centers |
| 10. Base full-time employee and salary information on the same time period.   | Agree, the department is currently computing rates in this manner                            |

Regarding the potential for further privatization of alcohol and drug abuse treatment services, the Auditor's office reported that:

1. Private providers indicated a strong interest in providing services under contract with the state.
2. Evaluations and therapy costs are lower in the private sector than human service center costs for those services.
3. Inpatient providers in the northwest and northeast regions charged rates less than the State Hospital.

4. Private providers may discount their rates when contracting with the state to provide services.

The schedule below presents the estimated annual savings based on fiscal year 1991 costs that could be realized if specific programs currently being provided by regional human service centers are contracted with the private sector based on the private sector's normal and customary rates identified by the Auditor's office. The Auditor's office cautioned that the estimates are subjective and based on general information. The decision to privatize a particular service should include an indepth case-by-case analysis.

| Human Service Center | Program              | Total Human Service Center Cost | Estimated Cost of Contracting the Service | Difference              | Estimated Human Service Centers Indirect Expenses (22%) and Contract Monitor-ing Costs (10%) | Potential Annual Savings |
|----------------------|----------------------|---------------------------------|---|-------------------------|--|--------------------------|
| Northwest            | Individual therapy   | \$ 56,970                       | \$ 19,849                                 | \$ 37,121               | \$ 10,152  | \$ 26,969                |
| North Central        | Individual therapy   | 123,125                         | 96,009                                    | 27,116                  | 15,567   | 11,549                   |
|                      | Addiction evaluation | 17,576                          | 13,696                                    | 3,880                   | 2,224  | 1,656                    |
|                      | DWI evaluation       | 3,459                           | 2,025                                     | 1,434                   | 518  | 916                      |
| Lake Region          | None                 |                                 |   |                         |  |                          |
| Northeast            | Individual therapy   | 21,547                          | 14,093                                    | 7,454                   | 3,049  | 4,405                    |
|                      | Addiction evaluation | 45,064                          | 31,292                                    | 13,772                  | 6,159  | 7,613                    |
|                      | DWI evaluation       | 2,618                           | 1,050                                     | 1,568                   | 450  | 1,118                    |
| Southeast            | Individual therapy   | 164,879                         | 91,592                                    | 73,287                  | 25,282   | 48,005                   |
|                      | Group therapy        | 79,809                          | 51,460                                    | 28,349                  | 11,383   | 16,966                   |
|                      | Addiction evaluation | 68,722                          | 49,500                                    | 19,222                  | 9,179  | 10,043                   |
|                      | DWI evaluation       | 15,192                          | 8,730                                     | 6,462                   | 2,295  | 4,167                    |
|                      | Family therapy       | 6,849                           | 5,106                                     | 1,743                   | 894  | 849                      |
|                      | Marital therapy      | 3,722                           | 1,889                                     | 1,833                   | 592  | 1,241                    |
| South Central        | Individual therapy   | 143,595                         | 111,833                                   | 31,762                  | 18,171   | 13,591                   |
|                      | Group therapy        | 32,369                          | 17,709                                    | 14,660                  | 4,996  | 9,664                    |
|                      | Addiction evaluation | 26,188                          | 19,781                                    | 6,407                   | 3,388  | 3,019                    |
|                      | DWI evaluation       | 18,090                          | 14,440                                    | 3,650                   | 2,247  | 1,403                    |
|                      | Marital therapy      | 4,092                           | 3,336                                     | 756                     | 500  | 256                      |
| West Central         | Individual therapy   | 36,467                          | 13,785                                    | 22,682                  | 6,369  | 16,313                   |
|                      | Addiction evaluation | 46,156                          | 36,099                                    | 10,057                  | 5,823  | 4,234                    |
|                      | DWI evaluation       | 12,172                          | 9,600                                     | 2,572                   | 1,526  | 1,046                    |
|                      | Family therapy       | 2,661                           | 990                                       | 1,671                   | 467  | 1,204                    |
| Badlands             | Individual therapy   | 76,646                          | 46,090                                    | 30,556                  | 11,331   | 19,225                   |
|                      | Family therapy       | 13,405                          | 3,514                                     | 9,891                   | 2,527  | 7,364                    |
|                      | Group therapy        | 8,525                           | 5,425                                     | 3,100                   | 1,225  | 1,875                    |
|                      | Marital therapy      | 3,271                           | 1,080                                     | 2,191                   | 590  | 1,601                    |
| <b>Total</b>         |                      | <b><u>\$1,033,169</u></b>       | <b><u>\$669,973</u></b>                   | <b><u>\$363,196</u></b> | <b><u>\$146,904</u></b>  | <b><u>\$216,292</u></b>  |

Note: This analysis assumes that the private sector can absorb all human service clients in these areas.

The committee received the Department of Human Services' response to the Auditor's office's comments on potential privatization of alcohol and drug abuse treatment services. The department does not believe the fiscal information presented really reflects what the impact of privatization would be, and its specific points included the following:

1. The department supports a public-private partnership in providing alcohol and drug abuse treatment services.
2. Additional costs totaling approximately \$290,000 per year would be shifted to other programs relating to direct service staff costs that the performance review report does not reflect.

3. The need for an indepth review and analysis on a case-by-case basis of services being considered for privatization.

The committee expressed the need for cost estimates of outcome studies relating to alcohol and drug abuse treatment services and asked that the State Auditor's office make available information during the next legislative session on the estimated cost of outcome studies and the effect of outcome studies on alcohol and drug abuse treatment programs of private providers and the Department of Human Services.

### **Other Reports**

The committee reviewed Minnesota's system of providing alcohol and drug abuse treatment services. The committee learned that Minnesota's alcohol and drug abuse treatment services are provided through county negotiated contracts with private providers or state hospitals for clients that are eligible for the state's general assistance program while North Dakota's treatment services are provided through regional human service centers.

The committee received other reports from the Department of Human Services, state employee organizations, and other organizations regarding the committee's study of privatization of government services and the performance review audit.

### **Recommendations**

The committee recommends House Bill No. 1026 to require a state agency to submit a report to the Senate and House Appropriations Committees during the legislative session on any action taken by the agency since the last regular legislative session to contract with the private sector for services and on any recommendations for future privatization of public services. The bill further provides that when new positions or programs are requested by an agency, the agency must report to the Appropriations Committees information on the consideration given privatization in arriving at the request.

The committee recommends Senate Concurrent Resolution No. 4002 to direct the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, expanded community services, and the development of partnerships between the public and private sectors for providing alcohol and drug abuse treatment services throughout the state. The resolution will allow the Legislative Assembly to monitor the development of partnerships between the public and private sectors relating to alcohol and drug abuse treatment services. This resolution also includes the recommendations resulting from the committee's monitoring services for the mentally ill and chemically dependent during the 1991-92 interim discussed earlier in this report.

### **CHILD CARE STUDY**

Pursuant to a Legislative Council directive, the committee studied child care services provided by state agencies and institutions. The directive stated that the study is to determine the extent to which state agencies and institutions should be involved in

providing child care services for children of their students or employees.

### **Background**

The major reason the Legislative Council directed the committee to study child care services at state institutions was because the State Hospital, in April 1991, decided to close its Hilltop Day Care Center because of lack of funding for the 1991-93 biennium. The day care center at the State Hospital began operations in 1966, at which time the State Hospital provided space, utilities, meals, and one state employee for the center. Revenues from the center paid other operating costs. In 1988 the State Auditor's office recommended that the State Hospital deposit day care center revenues in the state treasury and spend funds for day care operations only after an appropriation has been made by the Legislative Assembly for that purpose. As a result of the State Auditor's office recommendation, funding from day care fee collections and other hospital revenue for the day care center was included in the State Hospital's 1989-91 appropriation, including 9.75 FTE positions. After the 1991 Legislative Assembly chose not to appropriate approximately \$400,000 of general fund moneys to pay a portion of the day care center's operating costs, the State Hospital chose to discontinue the operations of the day care center because it determined an adequate amount of revenue could not be generated from center operating fees to continue operating the center.

### **Hilltop Day Care Center**

The committee conducted a tour of the Hilltop Day Care Center at the State Hospital and learned that a private parents group began operating the center in September 1991, and was being charged rent of \$750 per month for the facility. The State Hospital determined the \$750 rental amount based on provisions of Section 9 of Senate Bill No. 2002, approved by the 1991 Legislative Assembly, which provided that the executive director of the Department of Human Services may lease real or personal property at the State Developmental Center or the State Hospital if the lease will result in a net economic gain for the department.

The committee received testimony from representatives of the parents board of the Hilltop Day Care Center indicating that the center increases the productivity of State Hospital employees who have children at the center and improves recruitment and retention of State Hospital employees.

Because of the improved recruitment and retention of employees at the State Hospital due to the availability of child care services on the grounds, the committee informed the director of the Department of Human Services and the Office of Management and Budget that the meaning of the term "economic gain" used in Section 9 of Senate Bill No. 2002, approved by the 1991 Legislative Assembly relating to leases of property by the State Hospital, includes the benefits of improved recruitment and retention of employees. Subsequently, the director of the Department of Human Services determined that the Hilltop Day Care Center will be charged \$1 per year by the State Hospital for the space the center occupies.

## Child Care Services Provided at North Dakota State Institutions

The committee reviewed child care services provided at North Dakota state institutions and reasons why certain institutions do not provide child care services. The appendix at the end of this report presents 1991-92 information on child care services provided at North Dakota institutions.

The child care centers operated by the University of North Dakota, North Dakota State University, and Mayville State University are a part of each university's early childhood education program which trains students in early childhood education. Child care centers at North Dakota State College of Science, Valley City State University, Bismarck State College, UND-Lake Region, State Hospital, and Developmental Center at Grafton are operated under contract by private child care providers.

State-operated child care centers provide various developmental programs for the children receiving services at the centers including activities based on the child's developmental level that allow the children to practice skills previously learned, to develop new skills, and to promote self-assurance and social interaction.

The committee learned that expenses of the centers are paid from fees collected by the center; however, costs relating to space, utilities, and maintenance and custodial services are provided at no charge to the centers by each institution except for UND-Lake Region and the Developmental Center at Grafton which charge rent in return for the services provided. The University of North Dakota, North Dakota State University, and Mayville State University, because their centers operate as a part of the universities' early childhood education programs, also provide a center director position at no charge to the center. All other institutions that provide child care services contract for the services and, therefore, do not employ a center director.

The committee reviewed the following estimated costs of space, utilities, custodial and maintenance services, and a director's salary and fringe benefits, as applicable, for the institutions currently providing child care services:

|                                       |           |
|---------------------------------------|-----------|
| University of North Dakota            | \$243,600 |
| North Dakota State University         | \$121,722 |
| Mayville State University             | \$ 69,300 |
| Valley City State University          | \$ 28,968 |
| Bismarck State College                | \$103,000 |
| UND-Lake Region                       | \$ 22,000 |
| North Dakota State College of Science | \$ 18,040 |
| State Hospital                        | \$ 44,352 |
| Developmental Center at Grafton       | \$ 15,408 |

The reasons provided why other state institutions do not provide child care services include the following:

1. No facility is available to house a child care center.
2. The institutions lack funding needed to remodel a facility for use as a child care center.
3. Most students' or employees' child care needs are being met by private providers in the community.

4. The institution has not formally considered providing such services.

## Other States' Child Care Services

In response to the committee's request, the National Conference of State Legislatures arranged for a presentation by Ms. Deborah K. Holmes, Families and Work Institute, New York, to present information on experiences of other states in offering child care services to state employees and on other child care issues.

The committee learned that California, Massachusetts, and New York offer the most child care services to state employees. In California, 14 centers are contracted for with private providers and four are operated by state agencies. Those operated by state agencies are governed by a parent board and in all instances state agencies provide in-kind assistance, including space, utilities, and custodial and maintenance services.

New York operates 50 child care centers for state employees. Each child care center has its own board of directors and is a separate nonprofit organization; however, all are under the supervision of a nonprofit organization known as Empire State Day Care Services. Although the centers are not state-operated, the state does provide in-kind services, including space, utilities, and custodial and maintenance services.

Regarding legal liability issues of state-operated child care centers, the committee learned that all child care centers, including government-operated child care centers, need liability insurance coverage because of exposure to lawsuits. The high cost of liability insurance is a concern with all child care centers. State agencies which contract for child care services reduce their legal liability because the private providers are responsible for purchasing liability insurance.

## Child Care Center Tours

In addition to touring the Hilltop Day Care Center at the State Hospital, the committee also toured the Room to Grow Child Care Center at Bismarck State College and the privately operated Early Childhood Learning Center in Bismarck. The committee received reports from the operators of the centers indicating the following:

1. Because centers currently are not meeting the demand for infant care, the state should provide grants to child care centers to assist in the startup costs of providing infant care.
2. Because of the high startup costs of opening child care centers, the state should provide interest rate subsidies on loans for initial startup costs of child care centers.
3. Concern was expressed that although all public and nonprofit child care facilities and for-profit child care family and group facilities receive meal assistance under the federal food program administered through the Department of Public Instruction, for-profit child care centers (facilities that serve 19 or more children) are not qualified for the program.

### **Other Reports**

The committee received a report from the Department of Human Services regarding employer-sponsored child care centers in North Dakota. The following schedule compares the number of employer-sponsored child care centers in North Dakota to surrounding states:

North Dakota - 4  
Minnesota - 16  
Montana - 3  
South Dakota - 10

The committee received other reports from state agencies, higher education institutions, child care organizations, and individuals indicating that the state needs to provide a leadership role in child care by providing quality child care services to its employees, child care services provided to state employees will reduce absenteeism and increase work quality as well as improve the recruitment and retention of employees, and child care services provided on higher education campuses are important to students with children.

The committee received a report on Headstart programs in North Dakota and learned that 14 Headstart programs are operating in North Dakota, four on Indian reservations and the remaining 10 programs serve 20 counties. The programs serve approximately 2,300 children.

### **Recommendations**

The committee recommends Senate Bill No. 2026 to exempt leases of space for child care facilities at the State Hospital or Developmental Center at Grafton from the requirement that the leases must result in a net economic gain for the Department of Human Services.

The committee recommends Senate Bill No. 2027 to allow state agencies or institutions to provide child care services to the children of employees, students, or clients of the agency or institution and if space is available to any other children. The bill provides that the services may be provided only after the head of the agency or institution determines that there is a need for services and that the services will be provided at rates that are not less than the average rates charged by private child care providers providing comparable services in the community. An agency or institution may operate a child care center only in space available within the facility housing the agency or institution or contract with a child care provider for child care services in that space. In addition, the bill provides that within the limits of legislative appropriations, an agency or institution may provide a salary for a child care center director and provide utilities and custodial and maintenance services for the child care center.

### **EXPANDED CHILD CARE STUDY**

In response to the committee's request, the Legislative Council chairman approved the expansion of the committee's study of child care services provided by state agencies and institutions by authorizing the committee to apply for a child care financing system study grant through the National Conference of State Legislatures.

The committee's grant application was approved and the National Conference of State Legislatures hired a consultant (Mr. Victor J. Miller) to conduct a study of North Dakota's child care financing system. The study focused on ways the state can maximize the use of federal funds available for child care services.

### **Consultant's Recommendations**

The committee received the consultant's final report entitled "Toward Seamless Provision of Child Care Services in North Dakota" which contained the following recommendations:

1. Increase reimbursement levels under the four federally funded child care assistance programs - JOBS (job opportunities and basic skills), transitional child care, at-risk AFDC (aid to families with dependent children), and child care and development block grant. The consultant suggested that the state charge child care providers a \$25 per month service fee for each child at a child care facility whose family receives child care assistance under one of the federal programs. The moneys collected could be used to increase the reimbursement levels.
2. Make reimbursements during absences.
3. Encourage school districts to expand before and after school programs hopefully in coordination with other child care providers.
4. Directly reimburse child care providers for services rather than reimbursing families for child care services.
5. Improve the coordination of services between child care agencies with better information flow.
6. Use at least some social services block grant (Title XX) funding for child care. This would potentially make for-profit child care centers eligible for the child care food program if 25 percent of the centers' enrollees are Title XX eligible.
7. Expand transportation services in rural areas.
8. Continue to review other federal aid for possible use for child care.

### **Federal Child Care Legislation**

The committee reviewed the following federal child care assistance programs:

1. Child care and development block grant program. Seventy-five percent of the funding appropriated for the block grant is to be used to provide child care services for low income working families under a sliding fee scale program and 25 percent is to be used for a wide variety of activities including developing quality child care and increasing the availability of early childhood development and before and after school programs. North Dakota's grant for the 1992 federal fiscal year is approximately \$2.1 million, \$1.6 million of which is available for the child care assistance program and \$500,000 for improving quality and availability of child care services. No state match is required under this program.
2. JOBS (job opportunities and basic skills). This program provides funding for child care assistance to individuals receiving federal welfare assistance (aid to families with dependent chil-

dren) participating in job training. The state must match the federal funds based on North Dakota's federal medical assistance percentage (FMAP). North Dakota's FMAP for select years is as follows:

| <b>Federal Fiscal Year</b> | <b>FMAP</b> |
|----------------------------|-------------|
| 1992                       | 72.75       |
| 1993                       | 72.21       |
| 1994                       | 71.13       |

3. Transitional child care. After an individual leaves the JOBS program, the individual is eligible for the transitional child care assistance program. Like the JOBS program, the state must match the federal funds based on North Dakota's FMAP. Unlike the JOBS program, however, the client must share in the cost of child care based on a sliding fee scale.
4. At-risk child care block grant. Provides federal funds to states with no state match required for child care assistance for families at risk of going on AFDC.

The committee learned that projections indicate approximately \$400,000 of North Dakota's child care and development block grant allocation for the child care assistance program will not be spent based on the current sliding fee scale. The Department of Human Services reported that it is in the process of increasing its reimbursements under the child care and development block grant program and projects spending approximately 90 to 95 percent of the funding available to North Dakota by October 1993.

### **Other Reports**

The committee reviewed school district liability for child care services provided in school buildings. The committee learned that based on current law, school districts wishing to provide before and after school child care services to children of school age do not need a child care license. A school district offering child care services is liable for injuries that are caused by a negligent act of a school district employee; however, if the employee has not been negligent, the school district would not appear to incur liability. In addition, a school district providing child care services would be covered under the school district's liability insurance policy through the North Dakota Insurance Reserve Fund.

The committee reviewed child care provider licensing requirements relating to training in cardiopulmonary resuscitation (CPR). The committee learned that current law requires licensed child care facilities that care for eight or more children to maintain at least one person who is trained in CPR.

The committee also reviewed CPR training available in North Dakota and found that the American Red Cross, North Dakota Safety Council, and the American Heart Association provide CPR training.

The committee received testimony from state agencies, child care interest groups, child care providers,

and individuals regarding North Dakota's child care financing system, the consultant's recommendations, and child care issues in North Dakota. Major items stated in the testimony include:

1. Concern regarding child care providers currently receiving full payment for services from families on child care assistance because the providers will not receive additional compensation under the increased reimbursement levels but will pay the \$25 per month fee. A child care provider estimated that approximately 50 percent of families receiving state child care assistance pay the full amount.
2. The Department of Human Services currently provides funding for producing and distributing a quarterly child care newsletter called **The Provider** which is distributed to all licensed and registered providers as well as other human service agencies and interested persons.
3. Concern over the high number of children being left at home alone for various amounts of time each day in North Dakota.
4. Lack of adequate licensing requirements on child care providers and inadequate child care provider inspections.
5. The need for the Department of Human Services to provide inservice training for child care providers and staff including information on appropriate child care business practices and on federal and state child care assistance programs.
6. Reimbursements under child care assistance programs should be made directly to child care providers rather than to the families.

### **Recommendations**

The committee recommends Senate Bill No. 2028 to establish a proportional monthly service fee of \$25 based on the number of hours care is provided for each child at a child care facility for whom at least a portion of the child care costs are paid by the Department of Human Services. The bill provides that the fee may be charged by the department only when the department directly reimburses child care providers for child care costs and when child care providers receive financial benefits from the child care assistance programs.

The committee recommends Senate Bill No. 2029 to require the Superintendent of Public Instruction and the Department of Human Services to provide technical and financial assistance to school districts developing or providing early childhood services programs and require the Department of Transportation to provide financial assistance from federal transit programs for developing and operating transportation systems for participants in these early childhood services programs.

The committee recommends:

1. That Department of Human Services' child care reimbursement levels be increased over the following current maximums for the following child care assistance programs:

| <b>Program</b>   | <b>Current Maximum Reimbursement</b>             |
|--|--|
| JOBS (job opportunities and basic skills)              | \$200 per month for a child under the age of two |
| Transitional child care                                | \$276 per month for a child under the age of two |
| At-risk AFDC (aid to families with dependent children) | \$276 per month for a child under the age of two |
| Child care and development block grant                 | \$276 per month for a child under the age of two |

2. That the Department of Human Services use funding available under the federal social services block grant (Title XX) to pay for the preparation and distribution of a quarterly newsletter to all child care providers and state and county agencies involved in child care in North Dakota. The Department of Human Services, beginning October 1, 1992, is using social services block grant funding to pay for producing and distributing **The Provider** newsletter.

3. That the Department of Public Instruction encourage all for-profit child care centers that have at least 25 percent enrollees who are eligible for Title XX or other public assistance to apply for assistance under the federal child nutrition program.

The committee recommends Senate Bill No. 2030 to require all early childhood facilities to maintain at all times during which early childhood services are provided at least one person who is trained and currently certified in cardiopulmonary resuscitation.



**CHILD CARE CENTERS AT STATE INSTITUTIONS**

| Center                          | Institution                           | Operated By      | Rent        | Licensed Children | Age of Children          | Daily Rate  | Registration Fee   | Meal Charge to Parents | Employees  | Average Employee Salary |
|---------------------------------|---------------------------------------|------------------|-------------|-------------------|--------------------------|---|--|------------------------|--|-------------------------|
| UND Children's Center           | University of North Dakota            | University       | \$0         | 100               | 2.5 through 5 years      | \$15  | \$25/child/year  | \$0                    | 3 full time<br>7 part time<br>6 student teachers (pt)      | \$5.25/hour             |
| Center for Child Development    | North Dakota State University         | University       | 0           | 50                | 6 weeks through 6 years  | 0 - 2 years - \$17.33<br>students - \$15.60<br>2 years - \$16.37<br>students - \$14.73<br>3 - 6 years - \$15.52<br>students - \$13.97 | \$50/family -<br>Refunded after one month                      | 0                      | 6 full time<br>3 part time<br>4 student teachers (pt)      | \$9.00/hour             |
| Child Development Center        | Mayville State University             | University       | 0           | 60                | 2.5 through 5 years      | Students - \$9<br>Staff - \$10<br>Other - \$11  | \$5/family/year  | 0                      | 3 full time<br>15 work study (pt)<br>1 student intern (pt) | \$5.75/hour             |
| Three Seasons Child Care Center | North Dakota State College of Science | Private Contract | 0           | 35                | 6 weeks through 6 years  | 0 - 2.5 years - \$13.75<br>2.5 - 6 years - \$13.25  | \$5/family/once  | 0                      | 2 full time<br>6 part time                                 | \$4.50/hour             |
| Community Child Care Center     | Valley City State University          | Private Contract | 0           | 35                | 6 weeks through 8 years  | 0 - 2.5 years - \$14.50<br>2.5 - 8 years - \$12   | \$12.50/child/year   | \$5/month              | 1 full time<br>3 part time<br>2 student teachers (pt)      | \$4.25/hour             |
| Memorial Day Care               | UND-Lake Region                       | Private Contract | \$200/month | 30                | 2.5 through 11 years     | \$11  | \$25/family/once   | 0                      | 2 full time<br>1 part time<br>4 work study (pt)            | \$6.00/hour             |
| Room to Grow Child Care Center  | Bismarck State College                | Private Contract | 0           | 60                | 2.5 through 12 years     | Students - \$10.40<br>Others - \$11.20  | Students - \$25/<br>child/once<br>Others - \$40/<br>child/once | 0                      | 1 full time<br>9 part time                                 | \$4.50/hour             |
| Hilltop Day Care Center         | State Hospital                        | Private Contract | \$1/year    | 60                | 6 weeks through 12 years | 0 - 1.5 years - \$12.35<br>1.5 - 3 years - \$11.50<br>3 - 5 years - \$10.65<br>5 - 12 years - \$9.35                                  | \$40/child/year or<br>\$50/family/year                         | \$.80/child/<br>meal   | 3 full time<br>5 part time                                 | \$4.25/hour             |
| Teddy Bear Day Care Center      | Developmental Center at Grafton       | Private Contract | \$650/month | 36                | 6 weeks through 6 years  | 0 - 2.5 years - \$15<br>2.5 - 6 years - \$14  | 0  | 0                      | 6 full time<br>2 part time                                 | \$4.50/hour             |

# BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned four studies. Senate Concurrent Resolution No. 4066 directed a review of the state level administration of the human services delivery system. Senate Concurrent Resolution No. 4029 directed a study of the effect of the implementation of the federal Americans with Disabilities Act on state and local governments. Senate Concurrent Resolution No. 4050 directed a study of the distribution of federal child support enforcement incentive payments received by the state. House Concurrent Resolution No. 3002 directed a study of the implementation of the requirements relating to the Family Support (welfare reform) and Medicare Catastrophic Coverage Acts to determine the Acts' financial impact during the 1993-95 biennium and to review the effectiveness of changes to the system of delivery of public assistance to North Dakota families and individuals.

In addition, Senate Bill No. 2001 (1991) provided that the State Auditor's office is to conduct performance reviews of the Department of Human Services during the 1991-93 biennium utilizing at least one full-time equivalent position and to present resulting reports to the Budget Committee on Human Services.

Committee members were Senators Tim Mathern (Chairman), Russell T. Thane, and Jim Yockim and Representatives Bruce E. Anderson, Ronald A. Anderson, Merle Boucher, Jim Brokaw, Judy L. DeMers, Gereld F. Gerntholz, Rod Larson, Jeremy Nelson, Ron Nichols, Dagne B. Olsen, Ken Svedjan, and Harold N. Trautman.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## REVIEW OF STATE LEVEL ADMINISTRATION OF THE HUMAN SERVICES SYSTEM

Senate Concurrent Resolution No. 4066 directed a study of the human services delivery system. The Legislative Council recommended the system be studied but by motion limited the scope of the study to the state level administration of human services.

### Background

The Department of Human Services, established by reorganization on January 1, 1982, has an appropriation totaling \$850.7 million for the 1991-93 biennium, of which \$253.4 million is from the general fund, and 2,438 authorized full-time equivalent (FTE) employees. The department includes the Developmental Center at Grafton and the Jamestown State Hospital. Numerous studies have been conducted of the department and its predecessors, the Social Service Board and the Public Welfare Board, beginning with a review by the firm of Touche Ross in 1970.

The 1989-90 Budget Committees on Long-Term Care and Human Services conducted a joint review of alternatives for restructuring the human services delivery system in North Dakota, which included a review of other states' human services delivery systems and a county social services time study, and

resulted in a recommendation of 1991 Senate Bill No. 2033 encouraging the voluntary establishment of multicounty social service districts.

The 1985-86 Budget Committee on Human Services studied the consolidation of services provided by the Department of Human Services and the relationship between the department, the county social service boards, and mental health services. The study was conducted by Dr. Kenneth Dawes, University of North Dakota, who in his report summarized the strengths and weaknesses of the current human services delivery system as follows:

### Strengths

Organizational structure  
Physical facilities  
Working conditions  
Comprehensive services  
Lack of duplication  
Dedicated staff  
Competent staff  
Quality services  
Supportive community  
Service philosophy

### Weaknesses

Lack of coordination  
Administrative structure  
Ineffective leadership  
Political climate/control  
Lack of goals and priorities  
Closed decisionmaking  
Limited planning  
Poor needs assessments  
Lack of training  
Lack of evaluation of programs  
Underutilized programs  
High caseloads  
Lack of outreach services  
Lack of public awareness

The 1985 Dawes report included 21 recommendations that the committee adopted and recommended in Senate Concurrent Resolution No. 4003 (1987) urging, in part, the Department of Human Services to place priority on improving coordination and communication; define the roles and responsibilities of administrators; develop a systemwide statement of purpose, goals, and objectives; institute a formal, comprehensive, and objective needs assessment process; and regularly review all programs for recommending continuance, deletion, transfer, or modification.

### Dawes Update of 1985 Recommendations

The committee, in its review of the state level administration of human services, contracted with Dr. Kenneth Dawes who provided the committee a historical review of the development of social services in North Dakota and of the Department of Human Services. Dr. Dawes also conducted a review of the status of the Department of Human Services' implementation of the 1985 Dawes recommendations regarding the provision of human services in North Dakota. Dr. Dawes conducted interviews of personnel of the department and county social service agencies. The committee received Dr. Dawes' report on the status of the implementation of the 1985 recommendations.

### Summary of Interview Responses

The following is a listing of Dr. Dawes' 1985 recommendations and his summary of observations made by persons interviewed regarding the current status of the recommendations:

1. Improved coordination within the department and with the external community be a top priority for all levels of departmental administration.

Significant improvement in coordination has occurred although there could be additional improvement, especially between the central office and regional human service centers and between the central office and county social service boards.

2. Coordination be enhanced by developing glossaries and other training, handbooks, and manuals.

The department is making a continued effort to comply with this recommendation although much remains to be accomplished.

3. The department conduct an indepth study of communication channels and identify constraints to accurate, effective, and speedy communication.

Communication has generally improved within the system, especially within the human service centers, although problems still occur at times, especially in communications between the central office and human service centers and between the central office and county social service boards.

4. Responsibilities of regional centers and the counties be specified in formal annual joint memorandums of understanding.

The issues giving rise to this recommendation have dissipated and those counties that have seen value in such memorandums of understanding have one in place and those that see no value for such a memorandum operate on a more informal yet cooperative basis.

5. Regional administrators and staff develop increased linkages with community services.

Working relationships with private provider agencies and referral agencies are generally good but this is most evident at the case planning and service delivery level.

6. Each region develop public information brochures.

Efforts have been made to comply with this recommendation and updated brochures are in various stages of development. It was suggested the public media be utilized to inform the public concerning the services that are available through the human services delivery system.

7. The roles and responsibilities of each of the administrative positions be clearly defined and every effort be made to minimize unnecessary duplication.

Most persons interviewed indicated they understand the chain of command and know the appropriate person to contact when confronted with an issue; this was especially evident in the counties and the human service centers.

8. Leadership within the organization be enhanced by identifying strengths and weaknesses of administrators and providing necessary training.

Administrative training is and has been made available to those persons interested in receiving that type of training; however, a more basic issue relates to the lack of equitable career ladders for clinicians and therapists.

9. A departmentwide statement of purpose, goals, and objectives be developed.

The department appears to have complied with this recommendation through developing its strategic planning document and the essential services plan. Many employees, however, are not fully aware of the content of this strategic planning document and view it as a state office creation.

10. Recommended that prior to instituting new policies and procedures, input be secured from those persons who will actually institute the policies.

The department has made considerable effort to comply with this recommendation and the effort should be continued and expanded and timeframes for input be made more reasonable. Also, input should be taken seriously and feedback should be provided regarding that input.

11. Comprehensive planning be instituted on a systemwide rather than a programmatic or grant fund basis.

There is widespread support for the concept of comprehensive planning but also a recognition of the difficulties encountered in conducting such planning in light of uncertainty of funding, constant emergence of new needs, conflicting federal and state regulations, complexity of the human service system, and the personal viewpoints of advocacy groups and staff members. The department is slowly moving toward a more comprehensive approach to planning but planning is still largely conducted at the program and division level. It was suggested a closer linkage between the service programs and the economic assistance programs be established through joint planning.

12. A formal needs assessment process be adopted and conducted on a systemwide basis.

Progress has been made in complying with this recommendation but much additional work needs to be done. There needs to be a clear understanding of the extent of need that exists in the community and the state and the needs assessment process must address the complex needs of clients.

13. Existing programs and services be periodically and regularly reviewed.

Currently a formal, regular review process for programs does not exist although some program review occurs through the budget process.

14. A study of staff caseloads be made in order to determine appropriate standards and equities.

Interviewees expressed support for the concept of caseload standards and acknowledged the department has made some headway in this area but it was perceived as piecemeal. There was recognition that fiscal constraints drive the system but the need to serve clients is ethically of paramount importance. Therefore, establishing caseload standards may be an exercise in futility that results in a lowering of morale rather than increasing morale.

15. Each regional office develop a plan for promoting outreach.

Significant efforts have been made to comply with the recommendation although there is not unanimity. Some human service centers appear to be more outreach oriented than others; this differential may be related to the service philosophy of the center director and staff.

16. The department place greater emphasis on providing public information about departmental programs.

Increased efforts in providing public information concerning the services and programs available is supported. The effort must be balanced against the potential cost and the danger of raising consumer expectations beyond the ability of the department to deliver services. The effort should be to inform the public about issues relating to human services.

17. A thorough review of the Vocational Rehabilitation Division and staff be conducted to determine why many staff indicate a high level of dissatisfaction.

The department has apparently taken a number of significant steps to address this recommendation, it appears that the level of dissatisfaction among vocational rehabilitation staff is greatly diminished, and it appears the cooperation between vocational rehabilitation staff and other human service center employees is good.

18. Greater emphasis be placed on evaluative research and an information system designed as a tool for staff be developed.

The department has expended some effort in meeting this recommendation; however, evaluative research continues to hold a low priority within the system. An increased effort should be expended in research and the development of client satisfaction surveys on a statewide basis. The ARIS system received mixed reviews; if the data is valid, it should be tapped as a major source of research activity. The department has developed a few contracts with the higher education community to conduct studies or analyze data and that linkage should be encouraged and expanded to facilitate mutually advantageous research efforts.

19. Staff members be regularly evaluated, including administrators at all levels, to determine levels of functioning, strengths, and weaknesses.

This recommendation has been met, at least partially, as employees are evaluated on a regular basis and use of the critical job elements system permits individualizing the evaluation to the staff members' unique responsibilities. However, a formal method has not been developed to provide input into administrators' evaluations.

20. A career development plan be designed for each staff member and that staff development opportunities be provided to each staff member in keeping with the plans.

Career development planning appears to occur only on an informal basis and career planning is inhibited by the lack of training funds, the lack of career ladders in both clinical services and administration, and uncertainty concerning the future of the organization of funding.

21. A study be made to determine if staff salaries are equitable and competitive with salaries provided by similar organizations providing similar services.

There is continued dissatisfaction regarding salary levels and the lack of a reasonable pay grade step system. Salaries are considerably higher in the private sector and the perception is that the public sector has become a "training ground" for the private sector. There is also a concern that the public views public employees in a demeaning manner and views state and county government as inefficient and ineffective which affects employee morale and results in a loss of quality employees.

### **Emerging Trends**

In addition, Dr. Dawes provided the committee with the following information on emerging trends regarding the delivery of human services in North Dakota during the next decade:

1. Changing demographics - an increasing percentage of elderly.
2. Urbanization of population.
3. Changing patterns of family structure - more single-parent households.
4. Increased private-state-federal relationships.
5. Increased demand for home-based and personal services.
6. Impact of health care costs and technology on human services.

### **Dawes 1991 Recommendations**

Dr. Dawes, as a result of his review of the status of the department's implementation of his 1985 recommendations, recommended the Department of Human Services make several changes. The State Auditor's office, in its performance review of the department discussed later in this report, was asked to comment on Dr. Dawes' recommendations. Dr. Dawes' recommendations and the State Auditor's comments are summarized as follows:

1. The department should strengthen its current efforts to mold the department into an integrated, cohesive organizational structure with a common mission and purpose. The State

Auditor's office findings are consistent with this recommendation and conclude there is a lack of strategic planning as an ongoing departmentwide effort and total quality management should address this area.

2. The administration of the department should develop and implement a plan for recruiting, training, rewarding, developing, and retaining quality personnel. The State Auditor's office concurs and recognizes that a plan for training departmental personnel does not exist on a systemwide basis.
3. The administration of the department should develop and expand collaborative efforts with higher education institutions in the areas of evaluation, research, training, and consultation. The State Auditor's office did not review this area, but suggests that the Research and Statistics Division may be affected by the implementation of total quality management and its role should be considered in developing efforts with higher education institutions.
4. The administration of the department should develop and expand efforts with private providers, public agencies, schools, and hospitals in developing systemwide human services, planning, and needs assessment. The State Auditor's office recommends that the department develop guidelines on its relationships with agencies and groups.
5. The administration of the department should increase efforts to coordinate the activities of the service programs with the economic assistance programs. The State Auditor's office identified, as an area for future study, the relationship between the department and county social services.
6. The administration of the department should foster an internal decisionmaking process that is rooted in adherence to the mission of the organization and focuses on the needs of North Dakota citizenry. The State Auditor's office recommends the department develop a human service plan to be used as an effective planning document and that the leadership of the department take a proactive stand favoring strong relationships between organizational units. In addition, the State Auditor's office recommends that specific criteria be used to judge the success of the implementation of total quality management.
7. The administration of the department should establish a mechanism for anticipating future needs and conceptualizing potential approaches to meeting those needs. The State Auditor's office concurs with this recommendation and recommends that the department update the executive manual, paying specific attention to the role the cabinet fulfills in executive planning and decisionmaking functions. Also, the State Auditor's office recommends that the cabinet organize regular ongoing strategic planning ses-

sions and policy be developed to define the role of the quality council.

### **State Auditor's Office Performance Review of the Department of Human Services**

The committee encouraged the State Auditor's office to conduct a performance review of the Department of Human Services' mission, goals, and objectives; administrative structure; and quality assurance functions. Senate Bill No. 2001 (1991) required the State Auditor's office to conduct performance reviews of the Department of Human Services during the 1991-93 biennium and present resulting reports to the committee.

The State Auditor's office performance review recommendations are as follows:

#### **A. Mission, Goals, and Objectives**

1. The department update its executive policy manual, clarifying the roles and responsibilities of the executive director and the cabinet, especially as the cabinet fulfills executive planning and decisionmaking functions.
2. The department formalize and document its strategic plan identifying its mission, the various organizational goals, and the planning process for long-range and short-range plans.
3. The cabinet utilize the principles of strategic planning to meet identified objectives; to assess problems and opportunities for action; and to generate, evaluate, and select alternative strategies.
4. The department submit its agency biennial report by December 1 for each year required.

#### **B. Administrative Structure**

1. The department develop an organizational chart accurately reflecting decisionmaking and span of control, organizational balance, and functions and relationships of the organizational units.
2. The department develop guidelines regarding relationships with agencies and groups including an understanding of the expectation of departmental employees.
3. Leadership of the department take a proactive stand to develop strong relations between all organizational units, especially those that work on common projects or serve common populations.
4. The Research and Statistics Division of the Department of Human Services be reviewed as a part of any review of implementation of total quality management.
5. The department develop standards against which to measure and evaluate the implementation of total quality management.
6. The department make a high priority the examination of the span of control of managers of the various offices and divisions in light of the development of total quality management.

### **C. Quality Assurance**

1. The department review and update all administrative rules that implement statutory licensing obligations.
2. The department develop policies and procedures for the review of the licensure of human service centers.
3. Case files be developed and maintained by an individual in charge of the licensing review process and the files include relevant information on each center.
4. Supervisory or consultant recommendations regarding a particular case be documented in the case file.
5. The department's strategic plan include a charter for the quality council.

### **D. Other Areas**

The committee had specific questions regarding the State Auditor's performance audit which were answered as follows:

1. No legislative changes are required to implement the State Auditor's recommendations.
2. The State Auditor's office was unable to determine financial costs and benefits of the recommendations.
3. The State Auditor's office was unable to determine the fiscal impact of the recommendations for the 1993-95 biennium.

#### **Other Testimony**

In addition, the committee also received testimony from interested persons, including recipients and members of the Human Services Advisory Board, regarding the administration of human services. The committee learned from the Department of Human Services:

1. The department has been efficient and effective in its administration of human services.
2. A lack of sufficient administrative staff prevents regular proactive planning.
3. A total quality management function is being implemented in the department.
4. A strategic planning document has been developed to guide the department's operations and long-term planning operations.
5. The department's administrative structure should be reviewed regularly.
6. The leadership capabilities of senior departmental managers should be improved.
7. The department plans to implement Dr. Dawes' recommendations by continuing the development of total quality management and requesting additional funding for evaluative research, employee recognition, strategic planning, data processing coordination, and needs assessment.

The committee received information from the Department of Human Services on client satisfaction surveys, current evaluative research, and clients exiting the human service system.

### **Total Quality Management**

After the 1991 Legislative Assembly, the Department of Human Services began implementation of a total quality management initiative. The committee learned total quality management is a management system placing people as important customers and customer satisfaction as an organization's primary goal. The system is designed to establish a work environment in which everyone can work effectively, break down the barriers between departments, and improve the organization's performance.

The committee learned the Department of Human Services has identified five concepts of total quality management:

1. Commitment.
2. Customer focus.
3. Teamwork.
4. Communication.
5. Long-term strategic thinking.

Representatives of the Department of Human Services reported the department is committed to the implementation of a total quality management system that will take five to seven years. The implementation of total quality management is expected to assist the Department of Human Services in serving the citizens of North Dakota and in addressing many of the recommendations made by Dr. Dawes.

The estimated cost of the initiative is \$267,000 for the 1991-93 biennium of which \$67,000 is from the general fund. This cost was not anticipated by the 1991 Legislative Assembly and was made available by departmental rebudgeting. The 1991-93 costs include salaries for a .5 FTE administrator and consultant and related travel costs. The department is implementing a "train the trainer" concept of total quality management instruction where some departmental personnel are trained in the total quality management principles and in turn train other departmental staff. A budget of \$150,000, including approximately \$38,000 from the general fund, is requested by the department for the 1993-95 biennium.

#### **Recommendations**

The committee recommends Senate Concurrent Resolution No. 4003 to encourage the Department of Human Services to continue the development of a total quality management initiative. The Legislative Council is to monitor the department's progress in the implementation of this initiative during the 1993-94 interim, including receiving information on the human service areas affected by total quality management, and the related costs and benefits of total quality management. Total quality management concepts identified in the resolution include:

1. Achieving success requires management to be committed to total quality management and to conduct a systematic review of the implementation progress.
2. Focusing on service recipients and North Dakota citizens by identifying and prioritizing service needs, satisfying priority needs, and improving the quality and efficient delivery of services.
3. Encouraging employees to use teamwork to recommend change, providing training to enhance

employee skills, and stimulating employees by reward and recognition of superior performance in quality improvement.

4. Communicating and coordinating the provision of services by communicating quality goals to the citizens and the Legislative Assembly, providing services more efficiently, and encouraging cooperation within the agency and with providers and political subdivisions.
5. Long-term strategic planning to identify long-term needs of the citizens of North Dakota and to develop goals to meet those needs.

Senate Concurrent Resolution No. 4003 also states that the total quality management concepts are expected to:

1. Mold the department into a cohesive organizational structure with a common mission and purpose.
2. Provide employee incentives to reward quality performance.
3. Emphasize strategic planning to place a greater emphasis on needs assessment.
4. Improve coordination and consultation as a result of increased communication among departmental divisions.
5. Develop an internal decisionmaking process adhering to the mission of the department and focusing on the needs of North Dakota citizens.
6. Establish a mechanism for anticipating future needs and conceptualizing potential approaches to meeting those needs.

The committee also recommends Senate Concurrent Resolution No. 4004 to encourage the Department of Human Services to implement recommendations to improve its administrative structure to provide quality and efficiency in the human service delivery system and to report to the Legislative Council. The Legislative Council is to monitor the implementation of the recommendations. The committee considered the recommendations of Dr. Dawes and the State Auditor's office in developing the resolution.

Senate Concurrent Resolution No. 4004 encourages the Department of Human Services to:

1. Strengthen its efforts to mold an integrated, cohesive organizational structure with a common mission and purpose, including defining the division directors' roles within the department, developing a mechanism for advocacy groups to have input regarding budget needs, and deciding whether programs should be established based on a client or program perspective by the use of methods including total quality management principles and concepts.
2. Develop and implement a plan for recruiting, training, rewarding, and retaining quality personnel, including development of career ladders for both administrative and clinical personnel.
3. Develop and expand efforts with higher education institutions in the areas of evaluation, research, training, and consultation.
4. Develop and expand collaborative efforts with private providers, public agencies, schools, and hospitals to develop a systemwide planning and needs assessment, including developing methods to determine outcomes and to measure success of contractual services.

5. Increase efforts to coordinate the activities of the service programs with the economic assistance programs through joint planning and consultation.
6. Develop an internal decisionmaking process in line with the mission of the organization and focusing on the needs of North Dakota citizens.
7. Establish a mechanism for anticipating future needs and conceptualizing potential approaches to meeting these needs.
8. Clarify roles and responsibilities of the executive director and the cabinet and formalize and document the department's strategic plan identifying mission, goals, and the planning process for long-range and short-range plans.
9. Develop an updated organizational chart reflecting decisionmaking and span of control, make an active effort to develop strong relationships among organizational units, make an active effort to more clearly define the role and utilize the services of the Human Services Advisory Board, and develop guidelines regarding departmental relationships with other agencies and groups.
10. Develop standards against which to measure and evaluate the implementation of total quality management and make a high priority a review of departmental managers' span of control in light of the development of total quality management.
11. Develop and expand efforts to involve consumers in planning services and conducting outcome studies to determine the Department of Human Services' effectiveness in meeting the needs of consumers.

## **STUDY OF THE IMPACT OF THE AMERICANS WITH DISABILITIES ACT**

Senate Concurrent Resolution No. 4029 directed a study of the Americans with Disabilities Act and its expected impact on state and local governments. In January 1990, Congress passed Public Law 101-336 referred to as the "Americans with Disabilities Act," which became effective in July 1992 for employers with 25 or more employees. The resolution states as reasons for the study that the Act will require extensive changes for compliance at the state and local government level, the cost of these changes may have a tremendous fiscal impact on state and local governments, and it will be necessary to educate state and local officials of the effects of the Act on their entities.

### **Background**

Senate Bill No. 2004 (1991) appropriated \$150,000 to the Office of Management and Budget (\$100,000 from the general fund and \$50,000 from the state aid distribution fund) for one FTE position and related costs to administer the Americans with Disabilities Act and the building code program beginning January 1, 1992.

The following is a summary of the major titles of the Americans with Disabilities Act:

Title I - Employment. Provides that employers with 25 or more employees (15 employees by July 26, 1994) may not discriminate against

qualified individuals with disabilities. Employers must reasonably accommodate the disabilities of qualified applicants or employees, unless undue hardship would result. This became effective on July 26, 1992, for employers with 25 or more employees.

**Title II - Public Services.** State and local governments may not discriminate against qualified individuals with disabilities and new construction and alterations to existing facilities must be accessible. Existing facilities must meet program accessibility requirements consistent with Section 504 of the Rehabilitation Act of 1973. This became effective on January 26, 1992.

**Title III - Public Accommodations.** Public accommodations such as restaurants, hotels, theaters, doctors' offices, retail stores, museums, libraries, parks, private schools, and day care centers may not discriminate on the basis of disability. This provision became effective on January 26, 1992. Title III also includes specific prohibitions on discrimination and transportation services provided by private entities.

Also, physical barriers in existing facilities must be removed if readily achievable. If not, alternative methods of providing service must be offered if those methods are readily achievable. New construction in public accommodations and commercial facilities must be accessible (effective January 26, 1993).

Alterations to existing facilities must be accessible. When alterations to primary function areas are made, an accessible path of travel must be provided to the altered area, and the restrooms, telephone, and drinking fountains serving the altered area must also be accessible to the extent that the added accessibility costs are not disproportionate to the overall alteration costs (effective January 26, 1992).

Elevators are not required in newly constructed or altered buildings under three stories or with less than 3,000 square feet per floor, unless the building is a shopping center, mall, or health care provider's office (effective January 26, 1992).

New buses and other vehicles (except automobiles) operated by private entities must be accessible or the system in which vehicles are used must provide individuals with disabilities a level of service equivalent to that provided to the general public (for vehicles ordered after August 25, 1990).

**Title IV - Telecommunications.** Telephone companies must provide telecommunications relay services for hearing-impaired and speech-impaired persons 24 hours per day by July 26, 1993.

## **Governor's Americans with Disabilities Act Consortium**

The Governor, by directive, established a 22-member consortium to study the Americans with Disabilities Act, to provide recommendations regarding which governmental agencies should have responsibility and authority for implementation of the Act, to assist in providing necessary training, to identify statutory changes necessary to implement the Act, and to identify related fiscal impacts. Consortium members include private citizens and representatives of the Anne Carlsen School, School for the Deaf, Department of Human Services, office of the Attorney General, Job Service, Insurance Department, Labor Department, Department of Transportation, Central Personnel and Information Services Division of the Office of Management and Budget, and the Office of Intergovernmental Assistance.

At each committee meeting, the committee received progress reports from the Governor's consortium regarding the status of the implementation of the Americans with Disabilities Act and suggested changes to current law to assist in the implementation of the Act, including the following:

1. All state agencies have identified an Americans with Disabilities Act coordinator.
2. Representatives of the Office of Intergovernmental Assistance and the Central Personnel Division of the Office of Management and Budget provided Americans with Disabilities Act training regarding the employment requirements, and the necessary changes required of state and local governments and public accommodations to state agency coordinators, other state and local government employees, private citizens, and representatives of companies providing public accommodations.
3. An Americans with Disabilities Act clearinghouse was established to provide referrals and information regarding the Act.
4. The 1993-95 budget requests for Americans with Disabilities Act related capital improvements at state agencies and institutions total \$4.2 million, of which \$3.3 million is from the general fund.
5. State law be amended or repealed to make state law compatible with the Act.
6. Legislation be introduced to provide for a telecommunications relay system for the hearing impaired, to provide related specialized telecommunications equipment to persons in need of the equipment, and to provide for an excise tax to fund the program.

At the last committee meeting, representatives of the Governor's Americans with Disabilities Act Consortium informed the committee the accessibility guidelines referred to in the proposed committee bill draft are being revised which may require an amendment to the bill during the 1993 Legislative Assembly.

## **Other Testimony**

Representatives of the North Dakota Board of Architecture expressed concern with the requirements of the bill draft amending North Dakota Century



Code (NDCC) Section 48-02-19 relating to requiring written statements by architects of compliance with Americans with Disabilities Act requirements for public buildings.

### **Recommendations**

The committee recommends House Bill No. 1027 to make statutory changes for compatibility with the Americans with Disabilities Act which are summarized as follows:

1. Creates a new section regarding accessibility standards providing that every building or facility subject to the Americans with Disabilities Act must conform to the Americans with Disabilities Act accessibility guidelines.
2. Repeals NDCC Sections 23-13-12, 23-13-13, and 40-31-01.1, regarding handrails in bathrooms, bathroom dimensions, and ramped curbing for wheelchairs because these requirements are either met or exceeded by the Americans with Disabilities Act.
3. Amends three NDCC sections for compatibility with the requirements of the Act:
  - a. Section 23-13-04, relating to doors on schoolhouses, churches, and public buildings.
  - b. Section 39-01-15, relating to parking spaces for mobility-impaired persons.
  - c. Section 48-02-19, requiring public buildings and facilities to be usable by the physically disabled. Section 48-02-19 is amended to remove language that conflicts with the requirements of the Americans with Disabilities Act and requiring governing bodies of political subdivisions to obtain a statement from an architect that plans for a public building or facility meet the guidelines of the Americans with Disabilities Act.

The committee noted that attention should be given during the 1993 Legislative Assembly to addressing the concerns of the North Dakota Board of Architecture regarding requiring written statements from architects regarding building compliance with the Americans with Disabilities Act and to addressing any changes required relating to the pending changes to accessibility guidelines.

The committee also recommends House Bill No. 1028 to establish a program to provide specialized telecommunication services and equipment to the communications impaired and providing for a telephone excise tax to fund the program. The bill provides that:

1. The Information Services Division of the Office of Management and Budget is to have responsibility for administration of the program.
2. The program is to make available telecommunications relay service to persons who are communications impaired to allow them to communicate via the telecommunications network with noncommunications-impaired persons.
3. The Vocational Rehabilitation Division of the Department of Human Services is to determine eligibility and provide specialized telecommunications equipment to meet the needs of individuals who are communications impaired.

4. A telephone access line excise tax not to exceed 25 cents per telephone line per month will be charged, with the tax determined annually by the Information Services Division based on available cost data of providing intrastate telecommunications relay service.
5. The excise tax is to be deposited in a telecommunications services account for the communications impaired.
6. Local exchange companies or radio communication service providers will be allowed to deduct and retain five percent of the total excise tax billed and collected each month to cover administrative costs.
7. A total of \$1,710,000 from the telecommunication services account is appropriated for the 1993-95 biennium to the Information Services Division of the Office of Management and Budget to implement the Act. The Information Services Division estimates \$600,000, or 10 cents per telephone access line, will be required for the provisions of the telecommunications relay service and the remainder, up to \$1,110,000, if the maximum 25 cents is charged, would be available for specialized telecommunications equipment for the communications impaired.
8. The administrator of the program is to provide reports to the Budget Section regarding implementation of the excise tax, specialized telecommunications equipment expenditures, and the status of the appropriation.

### **STUDY OF CHILD SUPPORT ENFORCEMENT INCENTIVE ALLOCATIONS**

Senate Concurrent Resolution No. 4050 directed a study of the distribution of child support enforcement incentive payments received by the state from the federal government.

#### **Background**

The United States Department of Health and Human Services provides incentive payments to the states based on the efficiency and effectiveness of state and local child support enforcement programs. Currently North Dakota retains 25 percent of the federal incentive payments to be used for state administrative costs, with 75 percent of the incentive payments distributed to local child support enforcement units.

The 1991-93 appropriation for the Department of Human Services includes a total of \$2.4 million of federal child support enforcement incentive payments, of which \$600,000 (25 percent) is retained by the state and \$1.8 million (75 percent) is distributed to counties and regional child support enforcement units.

The State Office of Child Support Enforcement in the department provides direct and support services to the regional child support enforcement units. The cost of this support for the 1991-93 biennium is \$3.7 million paid by the state. In addition, the state pays 50 percent, or \$844,000, of the nonfederal share of the regional administrative costs with the counties paying the remaining 50 percent. The federal government pays \$3.3 million of the \$5 million of total regional administrative costs. Counties statewide re-

ceive \$1.8 million of incentive moneys while incurring related enforcement costs of \$844,000 during the 1991-93 biennium.

The 1991-93 Department of Human Services appropriation includes a total of \$12.1 million from IV-D collections, including \$11 million for the aid to families with dependent children (AFDC) program and \$1.1 million for the foster care program. These amounts represent the child support collections to be received and applied to offset previous AFDC and foster care payments.

The committee received information on North Dakota's child support enforcement program that is a state-supervised, county-administered program, including statistical information on program expenditures, program incentives and expenditures, and child support collections by county. In addition, the committee reviewed information on child support enforcement programs in neighboring states. Minnesota has a state-supervised, county-administered program and all federal incentive moneys are provided to the county child support programs. South Dakota has a state-supervised, state-administered program and all federal incentive moneys are retained by the state, and Montana has a state-supervised, state-administered program and the majority of the incentive payments are retained by the state.

### **Testimony**

The committee received testimony from interested persons, regional child support enforcement personnel, and the Child Support Enforcement Division of the Department of Human Services regarding current procedures for child support enforcement and the allocation of federal child support incentive payments. The Department of Human Services suggested the following options be considered for the use of the incentive moneys:

1. Retain the current incentive distribution method, 75 percent to the counties and 25 percent to the state.
2. Allocate the incentives based on the nonfederal share of regional office expenditures, 50 percent state and 50 percent county.
3. Allocate the incentives based on the respective share of the costs of operating the statewide child support (IV-D) program. Currently, the state pays 72 percent of the total nonfederal costs and the counties pay 28 percent.
4. Require the state to pay the local expenses of administration of the child support enforcement program and allow the state to retain all the incentives. If the political subdivisions were not participating in the costs of the program, no incentives would need to be passed through.
5. Require that all incentives paid by the federal government be spent on children's programs. In order to adopt this recommendation, the state should retain all the incentives. The Legislative Assembly through the appropriation process could then determine how best to invest the incentive funds in children's programs.

A representative of the North Dakota Family Support Council suggested that one percent of the federal child support incentive payments be provided for training child support enforcement personnel. This

would provide approximately \$24,000 each biennium.

Representatives of the Office of Management and Budget proposed the incentive moneys be allocated on a priority basis as follows:

1. Pay the state's costs of the child support enforcement program.
2. Provide for one percent of the incentive moneys to be set aside for training of child support enforcement personnel.
3. Any remainder earmarked for social services programs.

### **Recommendation**

The committee recommends Senate Bill No. 2031 to provide for:

1. The establishment of a child support incentives account.
2. The deposit of one percent of the federal child support incentive payments into the child support incentives account.
3. The Department of Human Services to distribute the moneys in the account, subject to legislative appropriation, as grants to organizations determined eligible to provide child support related education and training for individuals in child support enforcement.

The committee anticipates remaining incentive funds, after the one percent allocation, will continue to be allocated as the total amount is allocated, currently 75 percent of the funds to the counties and 25 percent retained by the state.

### **MONITORING WELFARE REFORM AND MEDICARE CATASTROPHIC COVERAGE ACTS**

House Concurrent Resolution No. 3002 directed a study to determine the financial impact of the Welfare Reform and Medicare Catastrophic Coverage Acts during the 1993-95 biennium and to review the effectiveness of changes to the system of delivering public assistance to North Dakota families and individuals. The resolution cites as reasons for the study the required development of a job opportunities and basic skills (JOBS) program to assist individuals in transition from public assistance to independent support by providing them with education and training activities to assist them in obtaining employment. The Act requires North Dakota to provide the necessary case management, child care, transitional child care, transitional medical care, and expanded AFDC payments for two-parent families with unemployed or underemployed parents. Also, the Medicare Catastrophic Coverage Act placed additional financial requirements on North Dakota's Medicaid program, requiring the state to pay Medicare premiums for certain low income persons and to provide Medicaid coverage for children and pregnant women at an expanded eligibility level.

The 1989-90 Budget Committee on Long-Term Care received reports from the Department of Human Services on the initial implementation of the two Acts. The JOBS training program and transitional child care provisions were implemented on April 1, 1990, and the unemployed parent provision expanded coverage was implemented on October 1, 1990. The total cost for the Department of Human Services of

the provisions for the 1991-93 biennium is estimated to be \$16.9 million, of which \$3.8 million is from the general fund.

The committee received progress reports from the Department of Human Services on the status of the Family Support and Medicare Catastrophic Coverage Acts at each of its meetings. The committee learned the Department of Human Services has, because of program participation and expenditures exceeding

estimates, made program changes to limit JOBS participation to 2,100 participants. Because the number of participants as of September 1992 was 2,250, new entrants will only be accepted after the number of participants is reduced below 2,100.

The following is a comparison of the funding of the major provisions of the Family Support Act for the 1991-93 and 1993-95 bienniums:

|  | <b>Total</b> | <b>Federal</b> | <b>General Fund</b> | <b>Other Funds</b> |
|--|--------------|----------------|---------------------|--------------------|
| <b><u>JOBS PROGRAM (Includes transportation)</u></b> |              |                |                     |                    |
| 1991-93 biennium                                     | \$ 3,784,194 | \$ 2,678,926   | \$ 803,152          | \$ 302,116         |
| 1993-95 biennium                                     | 3,554,605    | 2,442,800      | 789,775             | 322,030            |
| Net increase (decrease)                              | \$ (229,589) | \$ (236,126)   | \$ (13,377)         | \$ 19,914          |
| <b><u>JOBS CHILD CARE</u></b>                        |              |                |                     |                    |
| 1991-93 biennium                                     | \$ 4,160,277 | \$ 3,009,103   | \$ 950,985          | \$ 200,189         |
| 1993-95 biennium                                     | 5,081,160    | 3,517,287      | 1,291,915           | 271,958            |
| Net increase   | \$ 920,883   | \$ 508,184     | \$ 340,930          | \$ 71,769          |
| <b><u>TRANSITIONAL CHILD CARE</u></b>                |              |                |                     |                    |
| 1991-93 biennium                                     | \$ 713,215   | \$ 514,791     | \$ 163,920          | \$ 34,504          |
| 1993-95 biennium                                     | 1,479,095    | 1,025,444      | 374,758             | 78,893             |
| Net increase   | \$ 765,880   | \$ 510,653     | \$ 210,838          | \$ 44,389          |
| <b><u>TRANSITIONAL MEDICAID BENEFITS</u></b>         |              |                |                     |                    |
| 1991-93 biennium                                     | \$ 3,149,687 | \$ 2,278,614   | \$ 756,869          | \$ 114,204         |
| 1993-95 biennium                                     | 4,607,937    | 3,256,042      | 1,174,653           | 177,242            |
| Net increase   | \$ 1,458,250 | \$ 977,428     | \$ 417,784          | \$ 63,038          |
| <b><u>UNEMPLOYED PARENT PROGRAM</u></b>              |              |                |                     |                    |
| 1991-93 biennium                                     | \$ 5,121,480 | \$ 3,726,906   | \$1,152,114         | \$ 242,460         |
| 1993-95 biennium                                     | 7,392,221    | 5,122,577      | 1,875,032           | 394,612            |
| Net increase   | \$ 2,270,741 | \$ 1,395,671   | \$ 722,918          | \$ 152,152         |
| Total 1991-93  | \$16,928,853 | \$12,208,340   | \$3,827,040         | \$ 893,473         |
| Total 1993-95  | 22,115,018   | 15,364,150     | 5,506,133           | 1,244,735          |
| Total net increase                                   | \$ 5,186,165 | \$ 3,155,810   | \$1,679,093         | \$ 351,262         |

### **Recommendations**

The committee makes no recommendations regarding its study of the Family Support and Medicare Catastrophic Coverage Acts.

### **OTHER AREAS**

The committee also received information regarding child care services in North Dakota and other states in a joint meeting with the Budget Committee on Government Services. The report on the Budget Committee on Government Services contains detailed information regarding that committee's study of child care services.

The committee also received information regarding other states' use of alternative methods of providing state matching for medical assistance payments. The committee learned that at least 23 states finance a portion of the state's share of these medical assistance costs through either 1) donations of funds by hospitals or other facilities participating in the program, or 2) dedicated taxes imposed on hospital or other provider revenues. In return for these donations or dedicated taxes, the provider receives Medicaid payments that include the amount "donated or taxed" plus the applicable federal matching.

Mr. Victor Miller, Washington, D.C., presented a

report on the status of using provider taxes to fund medical assistance costs at the committee's September 1992 committee meeting. The committee learned that limits were recently established regarding the use of provider tax programs. Volunteer contribution provisions generally are no longer allowed and limits have been established for the use of provider taxes or assessments. Although the final regulations have not been promulgated, it appears states can continue to use provider taxes or assessments if the tax is broad based, if the tax is applied uniformly to all providers in a class, or if at least 85 percent of the burden of the tax is on health care providers and one of the following criteria is met:

1. If the tax is a licensing fee or similar levy, the tax must be the same amount for every provider in the class.
2. If the levy is a bed tax, it must be the same for each bed, for each provider within the class.
3. If the tax is imposed on provider revenues or receipts, the same rate must apply to each provider in the class.

The committee accepted Mr. Miller's report regarding the use of provider taxes to fund state medical assistance costs but does not make any recommendation regarding the use of these taxes.

# BUDGET COMMITTEE ON LONG-TERM CARE

The Budget Committee on Long-Term Care was assigned two study areas. Senate Concurrent Resolution No. 4057 directed a study of the feasibility and desirability of establishing a state basic care program including defining the services to be provided and appropriate state, county, and federal financial responsibilities. In addition, House Bill No. 1031 directed the Department of Human Services to study the medical assistance property cost reimbursement system for nursing homes in the state by establishing an advisory committee. The department was directed to report periodically to the Legislative Council on the progress of the study and any findings of the advisory committee. Responsibility to receive these reports and make recommendations was assigned to the Budget Committee on Long-Term Care by the Legislative Council.

Committee members were Senators Donna Nalewaja (Chairman), Elroy N. Lindaas, Harvey D. Tallackson, and Russell T. Thane and Representatives Rick Berg, Kathi Gilmore, Henning Jacobson, Lee Kaldor, Clarence Martin, Alan J. Peterson, and Kit Scherber.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## BASIC CARE STUDY

Senate Concurrent Resolution No. 4057 required a study of the feasibility and desirability of establishing a state basic care program including defining the services to be provided and appropriate state, county, and federal financial responsibilities.

### Background

#### Program Funding

The 1991 Legislative Assembly appropriated a total of \$2,575,000 for state matching of county optional supplementation and general assistance payments during the 1991-93 biennium, including \$965,625 from the general fund and \$1,609,375 from the state aid distribution fund. This amount includes state funding for individuals in basic care facilities for 1991-93 of approximately \$1,780,000, or 50 percent of the total estimated county cost of \$3,560,000.

There are approximately 976 persons in the 38 basic care facilities in North Dakota, of whom 412, or 42 percent, are receiving optional or general assistance supplementation from county social services. The state sets the basic care rates and the maximum rate that it will cost share in is the 70th percentile. The current monthly maximum basic care rate at the 70th percentile is \$950 or \$32 per day. The average facility rate with the 70th percentile limit is \$820 per month. For individuals on supplementation the current Social Security supplementation is \$422 per month for a single person. The net average cost after subtracting patient resources is therefore \$398 per month per person, or approximately \$13 per day. This compares to the average skilled nursing care cost net of patient resources of \$1,740 per month, or \$58 per day.

## Related Program Definitions

The following are several definitions related to the state matching of county optional supplementation and general assistance payments:

1. **Optional supplementation** - Payments made for people in basic care facilities whose costs exceed supplemental security income resources. (The current monthly supplemental security income payment is \$422 for one person and \$633 for a couple.)
2. **General assistance supplementation** - Payments made for individuals that have income from Social Security above the supplemental security income payment level but not sufficient income to pay basic care costs.
3. **Other general assistance** - Payments made on behalf of individuals without resources for burials, medical costs, money payments, and transient assistance.

## Optional Supplementation and General Assistance Historic Information

The optional supplementation and general assistance payment program began in 1974 when Congress created the federal supplemental security income program which replaced the aged, blind, and disabled program. Congress required states to provide a supplemental payment to individuals or couples whose total income under Social Security income would be less than it was under the previous program. Payments to these people became known as "mandatory supplementation" payments. For individuals who began living in a basic care or rest home after January 1, 1974, the payments were called "optional supplementation" payments. Since the Legislative Assembly did not meet until 1975, county government agreed to assist temporarily until funds could be appropriated in the following session. Beginning on July 1, 1977, legislative action authorized the Department of Human Services to reimburse optional supplementation payments, subject to the available appropriation. For the 1991-93 biennium the appropriation is intended to pay 50 percent of the total county costs. Actual supplementation payments for the 1991-93 biennium are estimated to be \$1,780,000 or 50 percent of the total estimated county costs of \$3,560,000.

## County Social Services Survey

Representatives of the North Dakota Association of County Social Service Board Directors reported the results of a survey they conducted of county social service boards regarding the optional supplementation program used to fund basic care for needy residents, summarized as follows:

- Fifty-one of 53 counties have a supplementation program.
- Services are provided statewide to 410 clients.
- Most counties pay only for care provided in licensed basic care facilities with eight counties paying for care in unlicensed facilities.
- Forty-nine of 51 counties are paying the established state basic care rate.

- Counties use general assistance residence requirements to determine if the county is responsible to pay the supplementation.
- Thirty-one counties use a screening method to determine eligibility for basic care, 10 counties conduct functional assessment screening, and 10 counties use another screening method, either social workers, social service boards, or acceptance by a basic care facility.
- All counties support a state-funded program available in all counties.
- The counties have varying resource, burial allowance, and income source determinations.

### Testimony

#### Department of Human Services

Representatives of the Department of Human Services provided an estimate of the additional cost to increase the monthly basic care reimbursement rate limit. The department establishes individual monthly facility rates and reimbursement is limited to the lower of the facility's actual rate or the 70th percentile rate limitation, currently \$950. The additional **biennial** cost to increase the limit to the 75th percentile (\$976 per month) or the 90th percentile (\$1,046 per month), is \$96,000 and \$298,000, respectively.

The department reported its basic care ratesetting task force reviewed the current basic care reimbursement process and recommended that a fair and equitable rate be established to allow basic care facilities to continue to operate. As a result, representatives of the department, as they jointly developed recommendations for a basic care system with county social services representatives, as discussed later in this report, recommended the state consider increasing the maximum basic care rate to the 90th percentile, currently \$1,046 per month. The average basic care rate at the 70th percentile is \$820 per month, at the 75th percentile it is \$827 per month, and at the 90th percentile it is \$839 per month.

The department also reported Section 4711 of the Omnibus Budget Reconciliation Act of 1990, intended to enhance home and community services for the frail elderly, is not an effective program for North Dakota because it does not fund services for the disabled, has increased case management costs, has more stringent eligibility standards than the current Medicaid waiver, does not have the flexibility of current programs, and has funding limits. As a result, the committee asked the chairman of the Legislative Council to provide, by letter to the state's Congressional Delegation, suggested changes to the Act. The chairman of the Legislative Council sent a letter in that regard in August 1992.

The 1993-95 Department of Human Services budget request includes a total of \$2.6 million from the general fund for reimbursing counties for poor relief expenditures, approximately the same amount as appropriated from all sources for the 1991-93 biennium.

#### Department of Health and Consolidated Laboratories

Testimony from the Department of Health and Consolidated Laboratories reported the following re-

lated to the department's responsibilities in the licensing of basic care facilities:

- The quality of care at basic care facilities varies considerably as do the residents' needs;
- Deficiencies were noted during departmental licensing reviews of basic care facilities which were due in part to the unmet medical needs of many residents;
- Basic care facilities in the state differ by residents' needs, facility age, and type of services provided;
- Suggestions were made that basic care facilities be operated and licensed following either a "medical" or "social" model; and
- Statutory changes were suggested to allow for monetary penalties for noncompliance with basic care licensing rules and to change the statutory basic care facility definition to provide that a basic care facility can provide medication administration services and may admit and retain only individuals for whom the facility provides either directly or through contract appropriate services to meet the individuals' needs.

#### Other Testimony

Basic care providers testified on the types of services and clients at their facilities and expressed concerns regarding reimbursement and licensing requirements. They suggested nonmonetary penalties be considered rather than monetary penalties for basic care facilities' noncompliance with licensing requirements. Representatives of the North Dakota Silver-Haired Education Association testified in support of expanded home and community-based services for the elderly to allow the elderly to remain in their homes longer.

#### County Social Service Agencies

Representatives of the North Dakota Association of County Social Service Board Directors made the following observations regarding a state supplemental program:

- The program should, at a minimum, include coverage for elderly and disabled individuals in licensed basic care or adult foster care settings or both.
- Screening or assessment procedures should be required to determine if the services of the basic care facility or foster home is necessary to meet the needs of the client. Need should be based on functional impairment of the individual.
- Annual assessments of the client's need should be conducted to determine the ongoing appropriateness of existing services.
- Statewide eligibility standards should be developed to include supplemental security income (SSI) and non-SSI recipients. If possible, the resource and income limits should be the same for these two groups of recipients.
- The program should be a state-funded program, available statewide, and benefits should be paid directly by the Department of Human Services to recipients. This would distribute costs more equitably across the state and eliminate the need for determining county residence for payment purposes.

- The program should be locally administered by county social service offices to provide maximum client access.
- Additional service options could be explored to possibly cover low income individuals.

**Department of Human Services  
and County Social Services  
Recommendations**

The committee asked representatives of the Department of Human Services and the North Dakota Association of County Social Service Board Directors to jointly develop recommendations for a state basic care program, considering the input of the North Dakota Long-Term Care Association, basic care providers, and senior citizen organizations. Their recommendations included bill drafts to implement the following provisions of a continuum of care for elderly and disabled persons:

| <b>Program Description</b>  | <b>Persons Projected to Receive Services</b> | <b>Estimated Biennial Cost</b> |
|---|--|--------------------------------|
| Supplemental grant to aged, blind, or disabled at home (maximum \$25/month)   | 7,549  | \$ 4,358,956                   |
| Special supplemental grant for home maintenance services for vulnerable aged, blind, or disabled (maximum \$50/month) | 602  | 716,704                        |
| Expanded service payments for elderly and disabled (SPED) program   | 278  | 1,615,021                      |
| Basic care assistance program (currently the state contributes \$2,575,000 toward the county costs of this program)   | 425  | 5,238,774                      |
| <b>Total estimated 1993-95 general fund cost</b>  |  | <u><b>\$10,980,560</b></u>     |

**Considerations and Recommendations**

The committee considered several bill drafts regarding basic care facilities. In addition to bill drafts that would implement the recommendations of the Department of Human Services and county social services described earlier in this report, the committee considered but chose not to recommend bill drafts that would have provided statutory monetary and nonmonetary penalties relating to violation of basic care facility licensing requirements.

The committee also considered but does not recommend a bill draft that would have provided a supplemental grant to the at-home aged, blind, or disabled of \$25 per month.

The committee, as it reviewed the continuum of care for the elderly and disabled, noted that the provision of services to individuals in their homes could potentially delay and reduce the need for more expensive and intensive services in the continuum of care. The following is a summary of services in the continuum of care (including the services recommended by the committee) and the average monthly per-client costs:

| <b>Program</b>                                       | <b>Average Monthly Cost</b> |
|--|-----------------------------|
| Special supplement for home maintenance              | \$43 per month              |
| Expanded service payment - alternative to basic care | \$235 per month             |
| Home and community-based services                    | \$323 per month             |
| Basic care assistance                                | \$473 per month             |
| Skilled nursing care                                 | \$1,740 per month           |

The committee recommends three bills, containing total 1993-95 biennium general fund appropriations of \$7,570,499, summarized as follows:

1. House Bill No. 1029 provides for a special supplemental grant for home maintenance services for vulnerable aged, blind, or disabled of up to \$50 per month. This is projected to serve 602 persons at a biennial cost of \$716,704 from the general fund.
2. House Bill No. 1030 provides for an expanded service payments for the elderly and disabled program and a state basic care program. The expanded service payments for the elderly and disabled program is projected to serve 278 individuals at a biennial cost of \$1,615,021 from the general fund and the state basic care assistance program is estimated to serve 425 individuals at a biennial cost of \$5,238,774 from the general fund. The bill also:
  - a. Provides that the Department of Human Services is to determine a basic care facility ratesetting methodology for all residents of basic care facilities effective on July 1, 1995. The methodology is not to allow different rates for similarly situated residents because of the source of payment for any resident's care and would not allow the state or any political subdivision to make payments to a basic care facility that does not set rates at the levels established by the department;
  - b. Requires the Department of Human Services to report, prior to July 1, 1994, to the Legislative Council or an interim committee regarding the development of the ratesetting methodology including recommendations for legislation necessary or appropriate to establish the ratesetting methodology;
  - c. Repeals North Dakota Century Code Section 50-01-09.2, relating to the state providing assistance for county poor relief costs to the extent funds are appropriated, and repeals, effective July 1, 1995, North Dakota Century Code Section 50-06-14.2, relating to rates payable to basic care facilities; and
  - d. Provides an appropriation to allow the state to assume financial responsibility for the basic care assistance payments. The counties would have responsibility to determine eligibility for benefits, to conduct initial and ongoing functional assessments, and to provide one-half of the counties' administrative costs.

3. House Bill No. 1031 changes the statutory provisions relating to a basic care facility to:

- a. Provide that a basic care facility is a facility providing room or board to five or more individuals requiring health, social, or personal care services but not requiring regular 24-hour medical or nursing services;
- b. Provide that services available at a basic care facility include leisure, recreational, and therapeutic activities, supervision of nutritional needs, and medication administration; and
- c. Restrict admissions of residents to basic care facilities by providing that a basic care facility may admit and retain only an individual for whom the facility provides, either directly or through contract, appropriate services to meet the individual's highest practicable level of functioning.

This bill does not contain an appropriation as it does not have a fiscal impact.

### **PROPERTY COST REIMBURSEMENT STUDY**

House Bill No. 1031 (1991) directed the Department of Human Services to study the medical assistance property cost reimbursement system for nursing homes in North Dakota by establishing a nine-member advisory committee consisting of three departmental staff, three representatives of the long-term care industry, and three legislators appointed by the chairman of the Legislative Council. House Bill No. 1031 appropriated \$150,000 for the study, of which \$75,000 is from the general fund. The department was directed to engage a qualified consulting firm to assist in the study and to report periodically to the committee on the progress of the study with any findings and recommendations.

#### **Current Method of Property Cost Reimbursement**

Except for the provisions of 1991 House Bill No. 1031, property cost reimbursement is based on depreciation of the cost of a facility limited to the **lowest** of the following:

1. Current reproduction costs.
2. Price paid by the purchaser.
3. Fair market value of the facility.
4. Seller's cost basis less accumulated depreciation plus recaptured depreciation.

Current rules also provide for recapture of depreciation reimbursement paid for Medicaid patients since 1984 to the extent that the facility sold for more than the undepreciated value of the facility.

#### **Number of Nursing Care Beds and Average Rates**

There are currently approximately 7,000 nursing care beds at 82 nursing facilities in North Dakota, of which 95 percent or 6,659 are occupied. Approximately 3,795 beds, or 57 percent of the occupied beds, are filled with Medicaid patients. The average Medicaid rate for the 1991-92 fiscal year was \$58 per day, or \$1,740 per month.

### **1991 House Bill No. 1031**

House Bill No. 1031 provided an exception to the current reimbursement method discussed earlier for five facilities purchased between July 1, 1985, and January 1, 1991. These facilities' basis for depreciation purposes is not limited by the previous owners' cost basis but instead real property depreciation reimbursement is based upon current reproduction costs of the assets depreciated on a straight-line basis over the assets' useful lives to the date of acquisition by the buyer and increased by one-half of the percentage increase in the consumer price index from the date of acquisition by the seller to the date of acquisition by the buyer, or the purchase price paid by the buyer, whichever is lower.

A total amount of \$783,345, of which \$184,086 is from the general fund, required to fund this additional reimbursement for the 1991-93 biennium was made available through the department's recaptured depreciation related to sales between Beverly Enterprises and the Benedictine Health Systems.

### **1991-93 Long-Term Care Reimbursement Appropriation**

The 1991 Legislative Assembly appropriated a total of \$162.8 million to the Department of Human Services of which \$38.2 million is from the general fund for Medicaid reimbursement for long-term care for the 1991-93 biennium. This represents an increase of \$31.7 million from the 1989-91 adjusted appropriation, including an increase of \$2.4 million from the general fund. The current property cost component of the long-term care reimbursement is estimated to be 6.87 percent of the total, or \$11.2 million for the 1991-93 biennium, of which \$2.6 million is from the general fund.

### **Committee Directives To Department of Human Services**

The committee, at an early meeting, provided the following suggestions to the Department of Human Services as it studied long-term care property cost reimbursement:

1. Review the current property cost reimbursement system, including the identification of its strengths and weaknesses as it relates to existing facility ownership, change of ownership situations, and sale and leaseback arrangements.
2. Review other states' property cost reimbursement systems, including the obtaining of information on the fiscal impact to other states of their systems, including a state with rate equalization, one with a fair rental system indexed to bond rates, and one at the federal limit that allows the property basis to be adjusted by changes in the consumer price index.
3. Consider alternative property cost reimbursement systems including a continuation of the system authorized under House Bill No. 1031 and the level allowed by federal law, with consideration given to allowing facility sales after January 1, 1991.
4. Consider the fiscal impact of alternative property cost reimbursement systems on nursing homes.

5. Consider the fiscal impact of proposed and selected alternative property cost reimbursement systems on total Medicaid reimbursement, including federal, state, and county costs for the 1993-95 biennium.
6. Identify any related statutory changes required to implement a revised property cost reimbursement system and address the appropriateness of statutory or administrative rule changes.

### **Testimony**

Representatives from the North Dakota Long-Term Care Association testified on the strengths and weaknesses of the current property cost reimbursement system. The current system reimburses property costs based on historical costs except for nursing home sales limited by previous owner's cost, fair market value, and current reproduction costs. The strengths and weaknesses of the current property cost reimbursement system are summarized as follows:

#### **Strengths of the Current System**

- A. Simple to administer and understand as it has been in place for a number of years.
- B. Appears to contain reimbursement rates that provide savings to taxpayers.
- C. Property costs are reimbursed except as limited by change of ownership.
- D. Meets the Health Care Financing Administration efforts to discourage nursing home transfers and to limit program costs.

#### **Weaknesses of the Current System**

- A. Does not react to sales in a reasonable manner because of limiting interest and depreciation reimbursement to the previous owner's level.
- B. Recapture of depreciation prevents some facilities from being sold, even in what may be emergency situations.
- C. Does not provide a return on investment for facility owners.
- D. Provides no incentives to the provider to refinance the provider's present debt at lower interest rates except to save costs for the state and the private pay resident. (The Department of Human Services subsequently implemented rules to encourage, where appropriate and cost effective, the refinancing of nursing home debt by providing reimbursement for refinancing costs in certain situations.)

#### **Department of Human Services Property Cost Study Advisory Group Reports**

At each committee meeting, the committee received Department of Human Services' reports on the status of the advisory committee's study of property cost reimbursement. The advisory committee engaged a consultant, Myers and Stauffer, Certified Public Accountants, Boise, Idaho, to provide financial information and projected fiscal impacts of alternative property cost reimbursement systems for property models based on cost-based reimbursement systems and on appraisal-based rental systems.

To assist in the development of the appraisal-based rental systems, the Department of Human Services engaged another consultant, Marshall and Stevens, Inc., Edina, Minnesota, to conduct appraisals of selected nursing care facilities in North Dakota. Onsite appraisals were completed of 21 of the 82 nursing facilities in North Dakota. These appraisals were then used to develop estimated values of the remaining facilities to be used as a basis for appraisal-based rental systems.

At the last committee meeting representatives of the Department of Human Services advisory committee on nursing home property cost reimbursement reported to the committee that the advisory committee had considered four models summarized as follows:

1. **Model A. Cost-based reimbursement system with reimbursement limited by the average nursing facility per bed replacement cost.** Replacement cost can be adjusted by various rental rates and occupancy factors to establish the limit. Assuming an 80 percent occupancy factor and a 12 percent rental factor, the most expensive option modeled, estimated total reimbursement would be \$7.4 million per year, approximately the same level as currently paid, with only one facility's actual costs slightly exceeding the limit.
2. **Model B. Cost-based reimbursement system with reimbursement limited by a percentage of the median property costs.** Property costs are ranked, the median cost is selected, and the maximum cost limit is the median adjusted by a percentage. For modeling purposes percentages used varied from 110 to 130 percent of the median, with occupancy factors from 80 to 95 percent. The most expensive option, a rate limit at 130 percent of the median with no occupancy limit, would cost \$6.5 million per year less than the current costs of \$7.4 million, but would reduce reimbursement for 13 of the 82 facilities.
3. **Model C. Appraisal-based reimbursement system with appraisals adjusted by a rental rate.** For modeling purposes limits were based on a percentage of median appraised values with various rental rates. An appraised cost with no limits and a six percent rental rate is the most expensive option modeled and results in annual costs of \$10.7 million. A 3.8 percent rental rate is overall cost neutral but results in 31 of 82 facilities receiving reduced reimbursement.
4. **Model D. Appraisal-based reimbursement system with appraisals reduced by outstanding debt and adjusted by a rental factor.** Again for modeling purposes limits based on a percentage of median appraised values and various rental rates were used. An appraised cost limit at 130 percent of the median and a five percent rental rate is the most expensive option and results in annual costs of \$10.1 million. A 2.6 percent rental rate is overall cost neutral but results in 33 of 82 facilities receiving reduced reimbursement.



Because several of the options would have a significant effect on individual facilities, and the advisory committee did not have sufficient fiscal information regarding the potential phase in of any of the options, the advisory committee was unable to recommend, without additional study, any of the options reviewed. Therefore, the advisory committee recommended the effects of 1991 House Bill No. 1031, which are to expire on June 30, 1993, be continued through June 30, 1995, and the property cost reimbursement study authorized for the 1991-93 biennium be continued to develop recommended changes to the property cost reimbursement system to become effective on July 1, 1995. The Department of Human Services informed the committee that approximately \$60,000 remains from the 1991-93 appropriation for the property cost study, of which \$30,000 is from the general fund. The department asked that authority be provided to continue to spend this money during the 1993-95 biennium. The committee also learned that the cost to continue the provisions of 1991 House Bill No. 1031 during the 1993-95 biennium totaling approximately \$850,000, of which \$255,000 would be from the gen-

eral fund, is not contained in the department's 1993-95 budget request.

#### **Considerations and Recommendations**

The committee asked the chairman of the Legislative Council to encourage, by letter, the executive director of the Department of Human Services to include in the department's 1993-95 budget request funding to allow the continuation of the provisions of House Bill No. 1031 until the study is completed. The chairman of the Legislative Council sent a letter in that regard in September 1992.

The committee recommends House Bill No. 1032 to provide for the continuation of the property cost reimbursement study and the funding provisions contained in 1991 House Bill No. 1031 for the 1993-95 biennium. The bill includes an appropriation to allow the expenditure of an amount equal to the unspent study funds from 1991-93, up to a maximum of \$60,000 including \$30,000 from the general fund, for the costs of continuing the property cost study during the 1993-95 biennium.

# COURT SERVICES COMMITTEE

The Court Services Committee was assigned two studies. House Concurrent Resolution No. 3046 directs a study of the problems associated with unification of the state's judicial system into a one-level trial system. Senate Concurrent Resolution No. 4043 directs the Legislative Council to review and monitor the implementation of 1991 House Bill Nos. 1516 and 1517 during the 1991-92, 1993-94, and 1995-96 interims to determine and ensure that a unified consolidated court system is accomplished.

In addition, Section 206 of 1991 House Bill No. 1517 provides that it is the intent of the Legislative Assembly that the interim Legislative Council committee assigned to review and monitor the implementation of House Bill No. 1517, in conjunction with the office of the State Court Administrator, perform a detailed analysis of the fiscal implications of the bill prior to the convening of the next two Legislative Assemblies. Section 206 also stated it was the intent of the Legislative Assembly that the transition to a single trial court of general jurisdiction include revision of the distribution of court revenues and legislative appropriations from the state general fund to provide a fair and equitable allocation of expenditures between the counties and the state.

Legislative Council members, at the Council's May 8, 1991, meeting at which Senate Concurrent Resolution No. 4043 was given priority for study, indicated that information available from the Supreme Court and the counties would be sufficient for any analysis without the need for the interim committee to engage the services of a consultant.

Committee members were Representatives John Schneider (Chairman), Alan Erickson, John Howard, William E. Kretschmar, John Mahoney, W. C. Skjerven, and Lee Snyder and Senators Ray David, Duane L. DeKrey, Jim Dotzenrod, Erwin M. Hanson, Jim Maxson, Wayne Stenehjem, and John T. Traynor.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## UNIFIED JUDICIAL SYSTEM STUDIES

### History

On September 7, 1976, a new judicial article to the Constitution of North Dakota was approved by the people. Section 1 of Article VI provides:

The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and such other courts as may be provided by law.

At the time the new article was enacted, there were district courts, county courts of increased jurisdiction, county courts without increased jurisdiction, county justices, and municipal courts.

Senate Concurrent Resolution No. 4089 (1979) directed the Legislative Council to study the judicial system to determine if structural changes were necessary due to the adoption of the new judicial article. The 1979-80 interim Judiciary "A" Committee recommended, and the 1981 Legislative Assembly adopted,

House Bill Nos. 1060 and 1061. The bills provided for one county court in each county instead of the multi-level system of county courts, county justice courts, and county courts of increased jurisdiction; provided county judges had to be law-trained and full time; and provided for the assumption by the state of many district court expenses.

## District Courts

Sections 8, 9, and 10 of Article VI of the Constitution of North Dakota provide:

Section 8. The district court shall have original jurisdiction of all causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the supreme court. The district court shall have authority to issue such writs as are necessary to the proper exercise of its jurisdiction.

Section 9. The state shall be divided into judicial districts by order of the supreme court. In each district, one or more judges, as provided by law, shall be chosen by the electors of the district. The term of office shall be six years, and a district judge shall hold office until his successor is duly qualified. The compensation of district judges shall be fixed by law, but the compensation of any district judge shall not be diminished during his term of office.

Section 10. Supreme court justices and district court judges shall be citizens of the United States and residents of this state, shall be learned in the law, and shall possess any additional qualifications prescribed by law. Judges of other courts shall be selected for such terms and shall have such qualifications as may be prescribed by law.

No justice of the supreme court or judge of the district court of this state shall engage in the practice of law, or hold any public office, elective or appointive, not judicial in nature. No duties shall be imposed by law upon the supreme court or any of the justices thereof, except such as are judicial, nor shall any of the justices exercise any power of appointment except as herein provided. No judge of any court of this state shall be paid from the fees of his office, nor shall the amount of his compensation be measured by fees, other moneys received, or the amount of judicial activity of his office.

Each of the state's 53 counties has a district court. These courts have original jurisdiction in all civil, criminal, and juvenile cases except as otherwise provided by law. In criminal felony cases, they have exclusive jurisdiction. In criminal misdemeanor cases, the district courts have original jurisdiction with the county court. In addition, the district courts are the appellate courts of first instance for appeals from decisions by administrative agencies.

In 1979 the Supreme Court divided the state into seven judicial districts. In each district there is a presiding judge who supervises all court services of all courts in the geographical area of the district. The duties of the presiding judge, as established by the

Supreme Court, include convening regular meetings of the judges within the district to discuss issues of common concern, assigning cases among the judges of the district, and assigning judges within the district in cases of demand for a change of judge. As of July 1, 1991, there were 27 district judges serving in the seven judicial districts.

### **County Courts**

County courts are courts of record, served by full-time judges who must be licensed attorneys. There are 26 county judges in North Dakota with most judges serving more than one county. County courts handle civil cases between private parties in suits involving \$10,000 or less; adjudicate criminal misdemeanors, infractions, and traffic cases; make final judgments in small claims cases involving \$3,000 or less; conduct probate, testamentary, guardianship, and mental health commitment proceedings; and hear appeals from municipal courts.

### **1991 Legislative Action**

#### **1989-90 Interim Study**

House Concurrent Resolution No. 3033 (1989) directed the Legislative Council to study the adequacy of the state's elected officials' compensation. The study was assigned to the Legislative Council's interim Budget Committee on Government Administration, which also studied the issue of establishing a single trial court of general jurisdiction as a means to achieve statewide equality with respect to judicial compensation.

The Budget Committee on Government Administration determined that in order to achieve statewide equality within the judiciary, a unified court system must be established and therefore that committee recommended 1991 Senate Bill No. 2026 to abolish county courts as of January 1, 1995; to provide for the establishment of a single trial court system consisting of eight judicial districts; and to reduce the number of district court judgeships from 53 to 42 by December 31, 1998. The bill also provided that on January 1, 1995, county court judges elected in 1994 would become interim district court judges with limited original jurisdiction. If any interim district court judge were elected to a district court judgeship or when the interim district court judgeship was abolished, 80 percent of the court revenue deposited in the county treasury would be deposited in the state general fund. The bill failed to pass the Senate.

#### **1991 Legislation**

The 1991 Legislative Assembly enacted House Bill No. 1517, which established a single trial court of general jurisdiction. This is to be accomplished through the elimination of county courts and the establishment of a number of additional district court judgeships, with a reduction in total number of judgeships to 42 before January 1, 2001. The primary implementation date for consolidation of trial courts is January 2, 1995, the day after the completion of the terms of all present county court judges.

The essential features of the transition process for establishing a single level trial court and reducing the number of judges are provided in Sections 1, 83, 85 through 90, and 206 of the bill. The remaining

sections are generally technical in nature, reflecting the elimination of county courts on January 1, 1995.

Section 1 contained many of the major substantive provisions for establishing a single trial court of general jurisdiction. Section 1 became effective on July 11, 1991; however, later dates for implementation of specific aspects of the transition process are provided in the bill. County courts and the office of county court judge are abolished at the completion of the terms of all county court judges on January 1, 1995. Additional district court judgeships are established on January 2, 1995. The number of additional district court judges is based on the lesser of the number of county court judges serving on January 1, 1991, or the number of county court judges serving on January 1, 1994. These additional district court judgeships will be filled by election at the general election in November 1994. A process is provided for the initial election of additional district court judges in 1994. The Supreme Court must designate by rule, prior to January 1, 1994, the judicial district for each additional district court judgeship. That designated judicial district serves as an area of election for that district court judgeship at the November 1994 election. The Supreme Court also must designate staggered terms for the additional district court judgeships with initial terms of two, four, or six years. Thereafter, all district court judges are elected for six-year terms. All case files, untried cases, or any unfinished business of each county court is transferred to the district court of the judicial district in which the county is located beginning January 2, 1995. Beginning in 1992 the budget for district courts submitted to the Legislative Council and to the director of the budget must include all salaries and expenses for the district court judgeships established. Any equipment, furnishings, and law libraries in the control and custody of the county courts on January 1, 1991, and any property acquired by the county courts from that date until January 1, 1995, must be transferred on January 2, 1995, to the district court of the county in which each county court is located until the state court administrator determines that the items are no longer needed by the district court. Upon that determination, custody and control of the property would revert to the respective counties.

Section 83 provides that the Supreme Court must reduce the number of district court judges to 42 before January 2, 2001. Section 85 requires that not more than 70 percent of the chambers of district judges may be located in cities with a population of more than 7,500.

Section 86 provides the means for reducing the total number of district court judgeships to 42 before January 2, 2001. When a vacancy occurs in the office of district court judge, the Supreme Court must determine whether the office is necessary for effective judicial administration. The Supreme Court may then order that the vacancy be filled, the office be abolished, or the vacant office be transferred to a judicial district in which an additional judge is necessary for effective judicial administration. Section 86 also allows the Supreme Court to abolish one or more offices of district court judge if the Supreme Court determines that the office is not necessary for effective judicial administration. This section requires a

one-year notice to the judge of the affected judicial district, and provides the district court judge holding the judgeship to be abolished with the opportunity for hearing on the determination before the Supreme Court. The elimination of the office is effective at the end of the term of the judge holding that office. This authority conferred on the Supreme Court may be exercised from July 1, 1995, to June 30, 1997, if on July 1, 1995, the number of district court judges is more than 48; from July 1, 1997, until June 30, 1999, if on July 1, 1997, the number of district court judges is more than 46; and from July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than 44.

Section 87 authorizes the presiding judge of a judicial district to appoint magistrates effective January 2, 1995. Section 88 addresses the issue of court transcript preparation services. Section 89 provides that any agreement or change to multicounty agreements to share services of county court judges prior to elimination of the office is subject to the approval of the Supreme Court.

Section 90 provides for the filling of vacancies in the office of county court judges. The Supreme Court may reduce the number of county court judgeships when a vacancy occurs prior to the elimination of county courts on January 1, 1995. The Supreme Court must make that determination in consultation with the board of county commissioners, judges, and attorneys of each affected county. If the vacant office is abolished, the board of county commissioners of each affected county has the option to either enter into an agreement with the Supreme Court for provision of judicial services by the state judicial system or to enter into an agreement with another county that has an office of county judge for the provision of county services until January 1, 1995.

Section 206 provides a statement of legislative intent regarding the allocation of court revenues and expenditures between the counties and the state. Section 206 provides:

**LEGISLATIVE INTENT.** The legislative assembly recognizes that this Act to implement article VI, section 1, of the Constitution of North Dakota, while it makes no present statutory change in the current distribution of court revenue, will result in the transfer of responsibility for certain court expenditures beginning January 2, 1995, from the counties to the state, including judicial compensation expenditures associated with the transition from county court judgeships to district court judgeships. The counties will remain responsible for all county court services until January 1, 1995, and thereafter will remain responsible for all other substantial court expenditures, including costs associated with the provision of courthouse facilities and the office and staff of clerk of district court in each county.

The legislative assembly also recognizes that the present allocation of court revenue will change substantially, without the need for statutory revision, due to anticipated changes in judicial practices associated with the imposition of fines and the assessment of court costs, thereby subjecting counties to diminished court revenues

and the state to increased fine revenues to the common schools trust fund. Although it is difficult to assess the precise fiscal impact of the transition from county court judgeships to district court judgeships, the legislative assembly recognizes that the required reduction in the present number of judges under this Act will result in a substantial cost savings to all taxpayers in North Dakota through the judicial reductions that will occur, regardless of whether the court expenditures are borne by the counties or the state.

Therefore, it is the intent of the legislative assembly that the interim legislative council committee assigned to review and monitor the implementation of this Act pursuant to Senate Concurrent Resolution No. 4043, as approved by the fifty-second legislative assembly, in conjunction with the office of the state court administrator, perform a detailed analysis of the fiscal implications of this Act prior to the convening of the fifty-third legislative assembly and the fifty-fourth legislative assembly. It is the intent of the legislative assembly that the transition to a single trial court of general jurisdiction include revision of the distribution of court revenues and legislative appropriations from the state general fund to provide a fair and equitable allocation of expenditures between the counties and the state.

### **Postsession Action Judicial Resignations**

South Central District Judge Larry Hatch of Linton resigned in July 1991 and Northwest District Judge Bert Wilson, whose chambers were in Williston, resigned October 1, 1991. On August 16, 1991, the Supreme Court signed orders eliminating the two positions, with Judge Hatch's position eliminated effective October 1, 1991.

### **Supreme Court Advisory Committees**

To assist in the administrative supervision of the North Dakota judicial system, the Supreme Court utilizes the services of numerous advisory committees. These committees address specific problem areas within their study scope and recommend solutions to the Supreme Court. Four of the committees—the Joint Procedures Committee, the Attorneys Standards Committee, the Judicial Standards Committee, and the Court Services Administration Committee—were established by the Supreme Court in 1978 as a part of its rulemaking process within the North Dakota judicial system.

In April 1991 the Supreme Court requested the Court Services Administration Committee to analyze and make necessary recommendations to implement House Bill No. 1517. The Supreme Court later expanded the authority of the committee to include suggested changes to the provisions of House Bill No. 1517.

### **Testimony And Committee Considerations**

The committee reviewed the results of a survey by the State Court Administrator's office concerning the fiscal implications of House Bill No. 1517. Annual

county court expenditures for calendar year 1991 were \$3,147,683 and for calendar year 1990 were \$3,062,006. Expenditures included salaries and wages; operating expenses including general expenses, law libraries, juries, and indigent defense; and equipment. Annual county court revenue for calendar year 1991 was \$2,987,942 and for 1990 was \$2,775,799. Revenues included bond forfeitures, 75 percent of the administrative fees, filing fees, and court costs.

House Bill No. 1517 did not change the distribution of county court revenue. These moneys would continue to go to the counties; however, the district court judges would determine whether to assess fines (which go to the state tuition fund) or costs (which go to the county). The proposed budget request for court unification for January 2, 1995, through June 30, 1995, is \$2,123,696 (\$1,566,997 is for salaries and wages, \$504,125 is for operating expenses, \$50,000 is for equipment, and \$2,574 is for services by the Information Services Division). The projected cost of the court unification for a biennium is \$8.5 million. The projection represents the worst case scenario as it does not consider the attrition of judges or possible changes in the distribution of court-related revenue.

### **Repeal of House Bill No. 1517**

The committee considered a bill draft that would have repealed House Bill No. 1517. The Supreme Court's Court Services Administration Committee, with the support of the Supreme Court; a representative of the Association of Counties; and various judges recognized some provisions of the bill may need change but supported the concept of court unification as embodied in the bill.

The committee was concerned about the fiscal impact of House Bill No. 1517, considering predictions for a large revenue shortfall for the 1993-95 biennium. The committee, however, supported the concept of court unification and concluded it was not necessary to repeal the provisions of the court unification bill at this time. The committee discussed several alternatives for changing the distribution of county court revenues but reached no conclusion. The committee recognized the need, however, to continue to work with the counties to develop a method of financing unification, such as transferring part of the county court revenue to the state or changing court filing fees.

### **1993-94 Interim Study**

The committee considered a resolution draft directing the Legislative Council to study any problems associated with court unification, including the funding of court unification with possible changes in filing fees or redistribution of court revenue. The committee concluded that problems may continue to arise with House Bill No. 1517 which a legislative committee should address and that further study must be done to develop a method of funding the court unification that was fair to all parties, including the state, counties, and users of the court system.

### **Number of Judgeships**

The committee considered a bill draft to raise the final number of district court judges from 42 to 44 or 46. The bill also corrected an error in House Bill

No. 1517. House Bill No. 1517 required under North Dakota Century Code Section 27-05-02.1(3)(c) that two judgeships would have to be abolished in two days between December 31, 2000, and January 2, 2001, if the reduction provided for in North Dakota Century Code Section 27-05-01(2) is to be met.

The committee was informed that the Court Services Administration Committee, with the support of the Supreme Court, recommends a total of 46 district judges by the year 2001 as necessary for the efficient delivery of judicial services. The Court Services Administration Committee did not suggest an increase in the number of judges at this time but wanted to be on record as supporting the increase by 2001. The Court Services Administration Committee also supported a study to consider raising filing fees to pay for the four additional judges the committee recommended. The committee also received testimony from a representative for the Association of Counties suggesting an increase in filing fees as a possible way to raise money for unification. Others testifying cautioned against considering that option without careful consideration of the consequences. A number of individual judges also suggested that 42 judges would not be enough to provide adequate judicial services to the state. A representative of the Association of Counties opposed the bill draft to raise the number of judges but recognized it may be necessary to do so later. The committee acknowledged that an increase in the number of judges authorized by House Bill No. 1517 may be necessary eventually but members of the committee were convinced that any attempt to increase that number now could lead to the demise of court unification.

### **70-30 Urban/Rural Split**

The committee considered a bill draft that would have eliminated the 70-30 urban/rural split for the placement of judges by repealing Section 85 of House Bill No. 1517. Section 85 amends North Dakota Century Code Section 27-05-08 to require that not more than 70 percent of the chambers of the district judges may be located in cities with populations of more than 7,500. The committee also considered a bill draft that retained the 70-30 split but raised the population cutoff to communities of more than 10,000. All parties testifying suggested the 70-30 requirement needed to be changed in some manner. A number of judges supported the repeal of the 70-30 requirement because it did not allow for the placement of the judges as the caseload required. Other judges, the Supreme Court's Court Services Administration Committee, and a representative of the Association of Counties supported the bill draft to raise the population cutoff to communities of more than 10,000.

Although committee members noted the problems concerning the 70-30 requirement, they were reluctant to support its repeal because the 70-30 requirement was one of the main reasons that there was support for House Bill No. 1517 in rural areas. The requirement would help to ensure continued rural judicial services. The committee considered the bill draft to change the population cutoff a good compro-

mise that would be supported by the Association of Counties.

### **Interim District Court Judgeships**

The committee considered a bill draft that provided the judgeships established on January 2, 1995, under House Bill No. 1517 would be interim district court judgeships. That is the title used in 1991 Senate Bill No. 2026, the interim committee bill that preceded House Bill No. 1517, to denote the titles of certain judges during the transition period from a two level to a single level trial court system. Under the bill draft considered by the committee, the interim district court judge would have the same jurisdiction as a district judge except the interim judge could not hear or determine any case or proceeding relating to an offense classified as a Class AA felony.

The committee considered a resolution draft that would have provided for a constitutional amendment to allow the Legislative Assembly to establish a procedure for staggering the terms of district court judges.

In November 1991 the Attorney General opined that the staggered term requirement for district court judges contained in North Dakota Century Code Section 27-05-00.1(3), which was created by 1991 House Bill No. 1517, was unconstitutional because it directly contravened Section 9 of Article VI of the Constitution of North Dakota which provides the term of office of a district judge must be six years. A number of judges expressed concern over the Attorney General's opinion and suggested a bill draft to remedy the problem.

The committee's research did not support a finding of unconstitutionality of the section. State law provides that when a statute is enacted it must be presumed that compliance with state and federal constitutions is intended, and that the entire statute is intended to be effective. The North Dakota Supreme Court has said that the courts will not declare a statute void unless its invalidity is, in the judgment of the court, beyond a reasonable doubt. If the Legislative Assembly must be presumed to have known about the six-year term requirement for district judges, the only logical conclusion is that the Legislative Assembly intended to create interim judgeships with two-year and four-year terms under the Legislative Assembly's authority to create additional courts. It was noted, however, that other courts have held

statutes similar to North Dakota's unconstitutional for establishing courts with less than the constitutionally mandated term.

The Supreme Court is required to designate prior to January 1, 1994, staggered terms for each additional district court judgeship. Because either interpretation of the statute could be argued, the committee decided the best policy would be for the Legislative Assembly to remedy this possible constitutional problem during the 1993 regular session, prior to the elections scheduled in 1994. The committee determined the constitutional question could be resolved by creating interim district judges with limited jurisdiction and that a constitutional amendment was not necessary.

The committee also received a report on the need for courtroom security. A representative for the Supreme Court described measures taken by the Supreme Court since the recent shooting of a district judge and a district judge from Cass County described that county's security measures.

### **Recommendations**

The committee recommends Senate Bill No. 2032 to provide that the authority of the Supreme Court to abolish the office of district court judges under section 27-05-02.1(2) may be exercised from July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than 42 rather than the 44 presently in the law.

The committee recommends Senate Bill No. 2033 to provide, effective January 2, 1995, that not more than 70 percent of the chambers of the district judges may be located in cities with a population of more than 10,000.

The committee recommends Senate Bill No. 2034 to provide the new judgeships that will be established on January 2, 1995, under 1991 House Bill No. 1517 are interim district court judgeships with the same jurisdiction as district court judges except the interim district court judge does not have jurisdiction to hear or determine any case or proceeding relating to an offense classified as a Class AA felony.

The committee recommends Senate Concurrent Resolution No. 4005 to direct the Legislative Council to study any problems associated with court unification under 1991 House Bill No. 1517, including the funding of the court unification.

# EDUCATION COMMITTEE

The Education Committee was assigned one study. House Concurrent Resolution No. 3068 directed the Legislative Council to study the feasibility of implementing an educational funding formula based on costs. The formula was to consider all sources of revenue and wealth in measuring a school district's ability to support education and it was to incorporate enrollment factors, require a minimum amount of local effort, and provide additional funding for categories of students below the statewide averages for per-pupil expenditures. The resolution was also considered an appropriate vehicle for monitoring the education funding issue. As a result, the committee addressed the broad issue of education funding and the limited issue of county superintendent position consolidation.

Committee members were Senators Curtis Peterson (Chairman), Layton W. Freborg, Orlin Hanson, Bonnie Heinrich, Jerome Kelsh, Don Moore, and Dan Wogsland and Representatives Ole Aarsvold, Wesley R. Belter, James O. Coats, Moine R. Gates, Robert Huether, Kevin Kolbo, Joe Kroeber, Bruce Laughlin, Charles Linderman, Ray Meyer, Robert K. Muhs, Sr., Jeremy Nelson, Doug Payne, Orville Schindler, and Don Shide.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## EDUCATION FINANCE STUDY

### Background

#### Foundation Program Initiation

The foundation program providing financial assistance to local school districts has been in effect since 1959, when the Legislative Assembly provided for a uniform 21-mill county levy and a supplemental state appropriation. These measures were intended to provide that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program was adopted in recognition that property valuation, demographics, and educational needs varied from district to district. Taking into account the obvious financial burdens suffered by low property valuation, high per-pupil cost school districts, the program consisted of a system of weighted aid payments that favored schools with lower enrollments and higher costs. This initial program also recognized that higher costs were incurred by districts providing high school education and therefore included a higher weighting factor for the allocation of aid to districts operating high schools.

#### 1973 Changes

The foundation program remained essentially unchanged until 1973, when the funding formula became more sophisticated, and state government assumed a proportionately greater share of financing education. The base support payment per pupil which was and still is the amount used to determine the sum each school district receives after weighting factors have been applied, was increased from \$260 to \$540 per pupil. The flat weighting factor for all high

schools was replaced with four classes of high school weighting factors and some adjustments were made in elementary school weighting factors. The maximum mill levy for high school districts was lowered from 34 to 24 mills and those districts with excess levies or unlimited levies were required to reduce them. The 1973 changes came at a time when federal and state courts were considering whether the level of spending for a child's elementary and secondary school education should depend upon the wealth of the child's school district.

#### 1975 Changes

In 1975 the Legislative Assembly increased the base payment amount from \$540 to \$640 per pupil for the first year of the 1975-77 biennium and to \$690 per pupil for the second year. Further adjustments were made to the weighting factors used to calculate aid for elementary school programs, including a new classification for seventh and eighth grade pupils in recognition of higher costs associated with junior high school instruction. Another change provided that no district would receive less in foundation program payments for another year than that district would have received based upon its enrollment in the previous school year. As a result, districts with declining enrollments were given a buffer period within which to adjust their fiscal circumstances and minimize traumatic revenue losses. The appropriation for the foundation program was increased from \$118 million for the 1973-75 biennium to \$153.4 million for the 1975-77 biennium.

#### 1977 Changes

The 1977 Legislative Assembly raised the base payment to \$775 per pupil for the first year of the biennium and \$850 for the second year. The appropriation for foundation payments was \$186.8 million for the 1977-79 biennium.

#### 1979 Changes

The 1979 Legislative Assembly raised the base payment to \$903 for the first year of the biennium and \$970 for the second year. The foundation program appropriation was \$208.4 million for the 1979-81 biennium. An additional \$1 million was appropriated for the funding of public kindergarten during the second year of the biennium.

#### Measure No. 6 and 1981 Changes

The next major development affecting educational finance occurred with the approval of initiated measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax were to be used to make possible state funding of elementary and secondary education at a 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated measure No. 6 also provided for a tax credit that made the 21-mill levy inapplicable to all but the owners of extremely high valued properties. The Legislative

Assembly eliminated the levy altogether and increased state education aid to compensate districts for all revenues that would have been derived from the levy. The foundation program appropriation was \$388.7 million for the 1981-83 biennium.

### **70-30 Concept**

During the 1981-82 interim, the Legislative Council's Education Finance Committee examined a new school funding concept known as the 70-30 concept, which took into account the costs of education incurred by each school district. The 70-30 concept began by determining the "adjusted cost of education" for each school district. It took into account the gross expenditures of a school district and subtracted the following items:

1. Expenditures for capital outlay for buildings and sites or debt service.
2. Expenditures for school activities and school lunch programs.
3. Expenditures for the cost of transportation, including the cost of schoolbuses.
4. Expenditures from state funds paid to the district for vocational and special education.
5. Expenditures from distributions from the state tuition fund.
6. All expenditures from federal funds except expenditures from funds designed to compensate districts in lieu of property taxes.

The result was the adjusted cost of education. The educational support for each year was to be the adjusted cost of education times an adjustment factor that would account for inflation. The amount of educational support for a school district as calculated pursuant to this procedure would represent the dollar amount equal to 100 percent of the district's total cost of education.

The 70-30 concept contained an equalization factor designed to provide fair treatment to districts with different costs and assessed property valuation profiles. The mechanism in the 70-30 concept provided for the computation of a 30 percent equalization factor to be used as the basis for determining each district's state funding entitlement. A local mill levy would raise an amount sufficient to pay 30 percent of the cost of education in each district, and the state would provide the remainder.

Proponents of the concept maintained that the central strengths of the approach were its comprehensive equalization mechanism and its consideration of each district's own expenditure levels in determining the amount of state education aid to which the district is entitled. Opponents, however, argued that the scheme was structured in such a manner that it rewarded high spending school districts. Because a district's prior expenditure level provided the base for allocation of the state education aid, the district that had spent the most on education would receive a correspondingly larger payment in state aid. The system would have penalized school districts that had been operating on extremely restricted budgets and which had given cost control a high priority. The committee did not recommend this funding concept to the Legislative Council.

### **1983 and 1985 Changes**

The Legislative Assembly in 1983 left in place the existing educational funding mechanism and set the per-pupil payment at \$1,400 for the first year of the biennium and \$1,350 for the second year of the biennium. The 1983-84 Education "A" Committee again studied elementary and secondary school financing. Weighting factors, increases in the equalization factor to 40 mills, and the excess mill levy grant concept were among the areas studied by the committee. The committee recommended an increase in per-pupil foundation aid payments, but declined to adopt recommendations regarding an increase in the equalization factor and the provision of excess mill levy grants. The Education "A" Committee recommended foundation aid payments of \$1,525 and \$1,595 for the biennium, but the 1985 Legislative Assembly set those figures at \$1,425 and \$1,455.

### **1987-88 Goals and Guidelines**

Although the 1985-86 interim Education Committee again considered matters of educational finance, it was the 1987-88 Education Finance Committee that set specific goals and guidelines to be taken into account during its deliberations on educational finance issues. The goals included:

1. That the committee should take a futuristic view and examine issues such as transportation, reorganization, consolidation, and salaries as they will exist in 10 years.
2. That the committee should establish a vision of the qualities that young people are expected to possess once they have gone through the educational system and that teachers must develop the skills necessary to bring that vision and those expectations to students.
3. That an educational system should provide all children with access to an equal educational experience.
4. That an educational system should require financial input from local school districts and the state.
5. That all aspects of the current educational system should be determined as viable or nonviable.
6. That steps should be taken to eliminate or reduce existing disparities in the educational finance system.
7. That an educational program should be responsive to technology and to the different ways that individuals learn.
8. That an educational finance system should, wherever possible, provide incentives rather than disincentives or directives.
9. That proposals should be examined in terms of their overall effects, rather than their effects on individual districts.
10. That legislation should be proposed with a view to readily accommodating change.

That interim committee reviewed several proposals to revise the existing education finance formula and generally agreed that any formula approved by the committee should increase state aid to school districts by \$35 million. Also discussed were various proposals that would have taken into consideration, as part of the foundation aid program, payments to



school districts from sources other than the state, in order to determine local ability to support education. Since time was insufficient to consider these issues, the committee recommended additional Legislative Council studies to determine whether other payments to school districts should be included as local resources when measuring a district's contributions to the foundation aid program and to determine whether the use of various factors in addition to property wealth could be embodied in an educational finance formula.

### 1989-90 Interim Study

During the 1989-90 interim, the Legislative Council's Education Finance Committee considered several proposals utilizing income factors and in lieu of tax revenues. One proposal required that the taxable valuation of property in the state be divided by the state's five-year average aggregate adjusted gross income. The resulting factor would then have been multiplied by the school district's adjusted gross income.

A second proposal would have deducted the following amounts from a school district's foundation aid payment: 1) the average federal adjusted gross income per individual in the school district divided by the average for all school districts, multiplied by the latest taxable valuation of the school district, multiplied by 30 mills; 2) three percent of the money received by the district from the state tuition fund for students who did not attend public school in the district; 3) three percent of federal payments received in lieu of taxes; and 4) three percent of the revenue received from oil, gas, and coal taxes.

A third proposal would have deducted an amount equal to the average federal adjusted gross income per student for the district, divided by the average for the state, and multiplied by the latest taxable valuation of the school district times 20 mills. The committee recognized that changes in the educational funding system of the state should be made, but determined that the state's financial situation had to be better defined and understood before alternative funding methods could be pursued. Consequently, the 1989-90 interim committee made no recommendations regarding school finance issues.

### Current Educational Funding Components

Public elementary and secondary education is principally funded by:

1. Local ad valorem real property taxes. North Dakota Century Code (NDCC) Section 57-15-14.2 permits a school board to levy an amount sufficient to cover these expenses:
  - a. Board and lodging for high school students as provided in Section 15-34.2-06.
  - b. The teachers' retirement fund as provided in Section 15-39.1-28.
  - c. Tuition for students in grades 7 through 12 as provided in Section 15-40.2-12.
  - d. Special education programs as provided in Section 15-59-08.
  - e. The establishment and maintenance of an insurance reserve fund for insurance purposes as provided in Section 32-12.1-08.

- f. A final judgment obtained against a school district.
- g. The district's share of contribution to the old-age survivors' fund and matching contribution for the Social Security fund as provided by Chapter 52-09 and to provide the district's share of contribution to the old-age survivors' fund and matching contribution for the Social Security fund for contracted employees of a multidistrict special education board.
- h. Rental or leasing of buildings, property, or classroom space.
  - i. Unemployment compensation benefits.
  - j. Removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings.
  - k. Participation in cooperative vocational education programs approved by the state board.
    - l. Maintenance of a vocational education program approved by the state board and established only for that school district.
  - m. The cost of purchasing, contracting, operating, and maintaining schoolbuses.
  - n. School library services.
    - o. The cost of equipping schoolbuses with two-way communications and central station equipment and providing for the installation and maintenance of such equipment.
  - p. Public kindergartens in connection with the public schools of the district.
  - q. The cost of a public recreation system.
  - r. The district's share to finance an interdistrict cooperative agreement authorized by Section 15-47-40.1.
2. Local ad valorem property tax levies for building funds. Under NDCC Section 57-15-17, the use of these funds is limited to the following:
  - a. The erection of new school buildings, or additions to old school buildings, or the making of major repairs to existing buildings.
  - b. The payment of rentals upon contracts with the State Board of Public School Education.
  - c. The payment of rentals upon contracts with municipalities for vocational education facilities financed pursuant to Chapter 40-57.
  - d. The limitations of school plans as provided in Section 57-15-16(2).
  - e. The payment of principal, premium, if any, and interest on bonds issued pursuant to Section 21-03-07(7).
3. State foundation aid. Under NDCC Sections 15-40.1-06 and 15-40.1-07, the educational support per pupil is determined and from that amount there is subtracted the product of 22 mills times the latest available net assessed and equalized valuation of property in the school district, and the amount by which the unobligated balance in the school district's interim fund is in excess of the amount authorized by NDCC Section 57-15-27.
4. State tuition apportionment payments. These are funded by income from the permanent school trust fund, fines, and lease proceeds from school lands and distributed in accordance with NDCC Section 15-44-03.

5. State transportation payments. Under NDCC Section 15-40.1-16, the Legislative Assembly establishes the amounts that school districts receive in transportation aid. For the 1991-93 biennium, the amounts are as follows:
  - a. For schoolbuses and school vehicles transporting pupils who live outside the incorporated limits of the city in which school the pupil is enrolled is located, a sum equal to 25 cents per mile during each year of the 1991-93 biennium for vehicles having a capacity of nine or fewer pupils and 67 cents per mile for each year of the 1991-93 biennium for schoolbuses having a capacity of 10 or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of 10 or more pupils are entitled to an amount equal to 28 cents per day for each public school pupil living outside the city limits who is transported in such buses.
  - b. For pupils who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to 17.5 cents per pupil per one-way trip. However, no payment may be made under this subsection for a student who rides on a vehicle for which payments are claimed under the subsection providing for payments for pupils living outside the city limits.
6. Coal conversion funds. Under NDCC Chapter 57-60, the operator of each coal conversion facility is taxed for the privilege of production. Thirty-five percent of the taxes received are returned to the county in which the facility is located. Of the 35 percent, NDCC Section 57-60-15 requires that 30 percent be apportioned to school districts within the county on the basis of each district's average daily membership.
7. Coal severance taxes. Under NDCC Section 57-61-01, all coal severed for sale or industrial purposes is taxed at 75 cents per ton, in lieu of any sales or use taxes. Thirty-five percent of the revenues are allocated for proportionate distribution to the coal-producing counties. Thirty percent of a county's share must be apportioned to the school districts of the county on the basis of each district's average daily membership.
8. Oil and gas gross production taxes. Under NDCC Chapter 57-51, a tax of five percent of the gross value at the well is levied upon all oil produced in North Dakota. The chapter also provides for a gross production tax upon all gas produced in North Dakota. The gas tax is calculated by taking the taxable production in mcf (thousand cubic feet) times the gas tax rate of four cents for 1991-92. Forty-five percent of the oil and gas production tax revenues that are allocated to each oil or gas producing county must be credited by the county treasurer to the county general fund. Thirty-five percent of those revenues allocated to any county must be apportioned by the county treasurer to school districts within the county on the average daily attendance distribution basis. However, no school district may receive in any single academic year an amount greater than the county average per-pupil cost multiplied by 70 percent, then multiplied by the number of pupils in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. In any county in which the average daily attendance or the school census, whichever is greater, is fewer than 400, the county is entitled to 120 percent of the county average per-pupil cost multiplied by the number of pupils in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached, all excess funds to which the school district would be entitled as part of its 35 percent share must be deposited instead in the county general fund.
9. Federal school lunch program funds. Under NDCC Chapter 15-54, the Superintendent of Public Instruction administers federal funds designed to provide nonprofit child nutrition programs and food distribution programs for eligible participants.
10. Public Law 81-874 Impact Aid. These are federal dollars awarded to local school districts upon which the United States has placed financial burdens. Impact aid is forthcoming when local school districts have had a reduction in available revenues as a result of real property acquisitions by the United States, when local school districts provide education for children residing on federal property, when local school districts provide educations for children whose parents are employed on federal property, or when there has been a sudden and substantial increase in school attendance as a result of federal activities.
11. Federal funds paid pursuant to Public Law 66-146, entitled "An Act to Promote the Mining of Coal, Phosphate, Oil, Oil Shale, Gas, and Sodium on the Public Domain." Under NDCC Section 15-40.1-13, such moneys are deemed the first moneys withdrawn or expended from the general fund for state school aid purposes.
12. Federal funds paid pursuant to the Taylor Grazing Act (43 U.S.C. 315i). Under NDCC Section 15-40.1-14, these funds are apportioned among the counties according to the amount of Taylor Grazing Act land in each county and then distributed to each school district in the county on the basis of average daily membership.
13. Miscellaneous other sources such as Johnson O'Malley funds. Johnson O'Malley funds are appropriated by Congress to the Secretary of the Interior and in turn used for education, medical attention, agricultural assistance, and social welfare of American Indians in a particular state.

#### **CURRENT STATE LITIGATION**

In 1989 a group of school districts and parents initiated a lawsuit to have the state's system of public school financing declared unconstitutional. The complaint in **Bismarck Public School District No. 1 v. State of North Dakota** charged that disparities in

revenue among the school districts have caused corresponding disparities in educational uniformity and opportunity that are directly and unconstitutionally based upon property wealth. The State of North Dakota argued that the state's statutes are entitled to a presumption of constitutionality and that the state has met its constitutional mandate regarding the establishment and maintenance of a uniform system of free public schools. The matter has been heard by a trial court. Although a decision has not been handed down, it is anticipated that the matter will ultimately be appealed to the North Dakota Supreme Court.

Because this pending case has the potential to declare the current system of educational financing unconstitutional, the committee considered finance equity issues, suggestions for changing the current method of funding education, and less drastic adjustments to the current formulas.

### **Finance Equity Litigation from a National Perspective**

While education is a shared federal, state, and local venture, in recent years the proportion of financial participation by the various governmental units has changed. The 1980s witnessed a reduction in federal effort and a resultant increase in state and local efforts. Had the federal effort stayed constant, the current federal effort would be \$18.6 billion rather than the actual \$13 billion.

Testimony indicated that one of the major difficulties faced by education funding proponents has been and continues to be societal attitudes. People are remarkably vocal about demanding increased educational services, but equally vocal about their unwillingness to require additional funding sources. This is most evident in states with an older population base. When constituents no longer have children of school age, they tend not to view education funding as an investment in the country's social structure and consequently do not support increased efforts. It is this situation that prompted groups in many states to turn toward the legal system.

In the 1970s and early 1980s, many of the school finance cases addressed the equity of spending issue. More recently, however, the groups have focused on the educational programs and are litigating the issue of educational opportunity. The results of finance equity litigation across the nation can be summed up as follows:

#### **I. Plaintiffs won at the state Supreme Court level:**

|             |   |
|-------------|---|
| Arkansas    | <b>DuPree v. Alma School District, 1983</b>                     |
| Connecticut | <b>Horton v. Meskill, 1977</b>                                  |
| Kentucky    | <b>Rose v. Council for Better Education, Inc., 1989</b>         |
| Montana     | <b>Helena Elementary School District No. 1 v. Montana, 1989</b> |
| Texas       | <b>Edgewood v. Kirby, 1989, 1992</b>                            |
| Wyoming     | <b>Washakie Co. School Dist. No. 1 v. Herschler, 1980</b>       |

#### **II. Plaintiffs won at the state Supreme Court level but further compliance litigation was also filed:**

|               |  |
|---------------|--|
| California    | <b>Serrano v. Priest, 1971, 1977</b>                   |
| New Jersey    | <b>Robinson v. Cahill, 1983; Abbott v. Burke, 1990</b> |
| Washington    | <b>Seattle School Dist. No. 1 v. Washington, 1978</b>  |
| West Virginia | <b>Pauley v. Kelly, 1979, 1988</b>                     |

#### **III. Plaintiffs lost at the Supreme Court level and no further complaints have been filed or further complaints were filed but also lost:**

|                |  |
|----------------|--|
| Colorado       | <b>Lujan v. State Board of Education, 1982</b>   |
| Georgia        | <b>McDaniel v. Thomas, 1981</b>  |
| Louisiana      | <b>School Board v. Louisiana, 1987, 1988</b>   |
| Maine          | <b>Sawyer v. Gilmore, 1912</b>   |
| Maryland       | <b>Hornbeck v. Somerset Co. Board of Education, 1983</b>                                   |
| Michigan       | <b>Milliken v. Green, 1973</b>   |
| North Carolina | <b>Britt v. State Board of Education, 1987</b>   |
| Oregon         | <b>Olsen v. Oregon, 1979; Coalition for Equitable School Funding, Inc. v. Oregon, 1991</b> |
| South Carolina | <b>Richland County v. Campbell, 1988</b>   |
| Wisconsin      | <b>Kukor v. Grover, 1989</b>   |

#### **IV. Plaintiffs lost at the Supreme Court level but further complaints have been filed:**

|              |  |
|--------------|--|
| Arizona      | <b>Shofstall v. Hollins, 1973</b>  |
| Idaho        | <b>Thompson v. Engelking, 1975</b>   |
| New York     | <b>Board of Education v. Nyquist, 1982, 1987; Reform Educational Financing Inequities Today (REFIT) v. Cuomo, 1991</b> |
| Ohio         | <b>Board of Education of the City of Cincinnati v. Walter, 1979</b>  |
| Oklahoma     | <b>Fair School Finance Council of Oklahoma, Inc. v. Oklahoma, 1987</b>   |
| Pennsylvania | <b>Danson v. Casey, 1979, 1987; Pennsylvania Association of Rural and Small Schools v. Casey, 1991</b>                 |

#### **V. Litigation is present but no Supreme Court decision has been rendered:**

|               |               |
|---------------|---------------|
| Alabama       | Nebraska      |
| Alaska        | New Hampshire |
| Idaho         | New York      |
| Illinois      | North Dakota  |
| Indiana       | Ohio          |
| Kansas        | Pennsylvania  |
| Louisiana     | Oklahoma      |
| Massachusetts | South Dakota  |

Minnesota  
Missouri

Tennessee  
Virginia

Lower court decisions have been rendered for the plaintiffs in Alaska, Minnesota, and Tennessee and for the defendants in Idaho and Nebraska.

#### **An Alternate Funding Formula**

In the 1990-91 school year, the average cost per pupil in the state was \$3,425, with the highest being \$11,743 and the lowest being \$2,086. The statewide average taxable valuation per pupil was \$7,870, with the highest school district being Spiritwood at \$77,745 and the lowest being Belcourt at \$145.

The committee was informed that the current funding formula is rigid rather than self-adjusting and that a discussion of equal educational opportunity cannot be undertaken until a way is found to equalize educational spending. As a result, the committee studied the effects of a funding formula that would include all sources of wealth and revenue in order to measure a school district's ability to support education and, at the same time, incorporate enrollment factors, require a minimum level of local effort, and provide additional dollars for categories of students falling below the statewide averages for per-pupil expenditures. Such a formula was embodied in 1991 House Bill No. 1563. The bill failed to pass but was referenced in the committee's study directive. Consequently, the bill served as the basis for the committee's deliberations.

In House Bill No. 1563, "in lieu of tax dollars" was defined as the receipts from all mineral resources,

Public Law 81-874 Impact Aid, Public Law 81-874 Low Income Housing Aid, and federal revenue in lieu of taxes. "Statewide average local contribution per pupil" was defined as the amount derived by adding the general fund levy; high school tuition levy; tuition fees for regular education, special education, vocational education, summer school programs, and driver's education; interest income; revenue from all local sources and county sources; Public Law 81-874 Impact Aid; Public Law 81-874 Low Income Housing Aid; Elementary and Secondary Education Act emergency school assistance; Indian education program aid; and federal revenue in lieu of taxes; and dividing the total by the full-time equivalent average daily membership.

The bill required the Superintendent of Public Instruction to determine weighting factors for each of the following categories, based upon the prior year's state average cost per pupil:

| <b>Grade</b> | <b>Average Daily School Membership or Fall Enrollment</b> |
|--------------|---|
| K - 3        | Under 80  |
| K - 3        | 80 or more  |
| 4 - 6        | Under 75  |
| 4 - 6        | 75 or more  |
| 7 - 8        | Under 50  |
| 7 - 8        | 50 or more  |
| 9 - 12       | Under 100   |
| 9 - 12       | 100 or more   |

To arrive at the net state payment, a number of calculations were required.

#### **To calculate gross entitlement:**

1.  $\text{Per-pupil expenditure} \div \text{Lowest per-pupil expenditure of the eight categories} = \text{Weighting factor}$
2.  $\text{Weighting factor} \times \text{Number of pupils} = \text{Number of weighted per-pupil units}$
3.  $\text{Number of weighted pupil units} \times \text{Lowest per-pupil expenditure of the eight categories} = \text{Gross entitlement}$

#### **To calculate the local share:**

1.  $\text{Taxable valuation of a school district} \times \text{Statewide average mill levy for the most recent year} = \text{"A"}$
2.  $\text{"A"} + \text{All in lieu of tax dollars received by the school district} = \text{"B"}$
3.  $\text{"B"} \div \text{By the number of resident pupils} = \text{"C"}$
4.  $\text{"C"} + \text{Statewide average per-pupil local contribution} = \text{"D"}$
5.  $\text{"D"} \div 2 = \text{"E"}$
6.  $\text{"E"} \times \text{Enrollment of the district} = \text{"F"}$
7.  $\text{Gross entitlement} - \text{"F"} = \text{Net state payment}$

The bill also provided that if a district's per-pupil expenditure is less than 90 percent of the statewide average cost per pupil for any expenditure category, that district was entitled to a supplemental payment. If the district's mill levy was greater than the statewide average mill levy, the district's per-pupil expenditure for the various enrollment categories would be compared to 90 percent of the statewide average per-pupil expenditure for the various enrollment categories. If the district's per-pupil expenditure was less than 90 percent of the statewide average per-pupil expenditure for any category, the district was entitled to a supplemental payment in the amount needed to raise the district's per-pupil expenditure to 90 percent of the statewide average for that enrollment category, times the number of pupils in that enrollment category in the district. Finally, the bill required that proportionate payments be made for nonpublic school pupils enrolled in public schools for vocational and academic courses, high school pupils enrolled in summer programs, and pupils enrolled in alternative education programs.

The committee compared the per-pupil payment provided for in House Bill No. 1563 with the 1990-91 per-pupil payments and found that out of the 266 districts examined, 129 would gain funding while 137 districts would lose funding. Of the 42 districts having per-pupil dollar effects of \$50 or less, 18 would gain funding while 24 would lose funding. Of the 40 districts affected in the \$51 to \$100 range, 24 districts would gain funding while 16 would lose funding.

Of the 140 school districts that would experience funding changes ranging between \$101 and \$500 per pupil, there were an equal number of districts gaining funding and districts losing funding. The remaining 44 districts would experience funding changes in excess of \$500 per pupil, with 17 of those districts experiencing gains and 27 experiencing losses.

The overall gain appeared to average \$241.82 while the overall average loss was \$365.91. School districts in Fargo, Jamestown, Bismarck, Dickinson, and Williston would have experienced funding increases, while Grand Forks would have experienced a funding decrease.

Testimony suggested that equalization means the process of compensating for differences in order to reach equality and that equity means there must be a direct and close correlation between a district's tax effort and the educational resources available to it, i.e., a district must have substantially equal access to similar revenues per pupil at similar levels of effort. However, testimony also suggested that equalizing the amount of education dollars available is simply not enough and that achieving equal educational opportunities may very well require an unequal distribution of dollars.

As the impact of House Bill No. 1563 was considered, individual committee members reviewed the specific impact on the schools in their districts. Initial responses to the bill were linked to any advantages offered or disadvantages suffered by their schools.

Throughout the interim, the goal sought to be achieved was expressed as "equal educational opportunity." However, the committee found that to be an ethereal phrase, understood in its broadest general perspective, yet incapable of the definition needed for

conceptualizing its application to various funding formulas. The committee took no action on the funding scheme proposed in House Bill No. 1563.

### **County Superintendents**

House Bill No. 1640 (1989) changed the status and structure of the county superintendents of schools in North Dakota. Effective January 1, 1993, the county superintendents of schools must be appointed and employed by the respective boards of county commissioners, rather than elected by the voters of each county. The boards of two or more counties can agree to jointly employ a county superintendent of schools to perform the functions of the office. Any county with fewer than 1,000 persons over the age of five and under the age of 18 for the previous school year must combine with another county or counties to jointly employ a county superintendent of schools.

A board of county commissioners having to jointly employ a county superintendent of schools must develop a plan to cooperate with the other counties. If the counties cannot agree to jointly employ a county superintendent, the Superintendent of Public Instruction may require them to participate in a plan. All plans to share a county superintendent must receive approval by a majority of the presidents of each school board in each county and must be confirmed by the Superintendent of Public Instruction.

In order to assist the boards of county commissioners in adopting plans for county superintendents of schools, the Superintendent of Public Instruction issued approval criteria by which the plans are to be judged and approved. One of the criteria requires that the person hired as the county superintendent of schools be employed on a full-time basis.

The Attorney General, in a letter dated March 24, 1992, pointed out that NDCC Chapter 15-22 does not contain a requirement that the county superintendent of schools, whether hired by a county or jointly by several counties, be hired on a full-time basis. However, the Attorney General added that although a county superintendent of schools is not required by statute to be hired on a full-time basis, NDCC Section 15-22-25 does require that each county have a plan to implement the law on hiring a county superintendent of schools and it does give the Superintendent of Public Instruction discretion in the approval of those plans. As a result, a number of people expressed their concerns to the Education Committee.

The perspective offered by representatives of the Superintendent of Public Instruction is that times have changed and so too have the functions of, and in many cases the areas served by, county superintendents. While details involving this evolution are not clear, it was suggested that there is a need to move toward the creation of intermediate service agencies that would integrate services that cannot be provided by individual districts. Accompanying this evolution is the need to upgrade the qualifications of the office and to develop a different funding system.

Others, however, suggested that the approval criteria went beyond the intent of the statute. Testimony was given that requiring a full-time position over several counties would increase travel time and costs while decreasing the actual number of service hours that a county receives. It was stated that

counties should be given the option to consolidate the positions, not a state mandate to do so.

The committee, upon receiving approval from the chairman of the Legislative Council, requested the Superintendent of Public Instruction to consider revising the current approval criteria in order that counties may be allowed to employ part-time county superintendents of schools. In response to the committee's request, a representative of the Superintendent of Public Instruction testified that the requirement for a full-time superintendent would be relaxed, but that further movement toward consolidation and a full-time position would still be encouraged.

### **School Building Funds**

The committee considered a bill draft relating to the disposition of moneys in school building funds. Under current law, the governing body of a school district may pay into the general fund of the school district any moneys that have remained in the school building fund for a period of 10 years or more and then include such funds as part of its cash on hand in its budget for the ensuing year. The bill draft provided that the governing body of any school district may pay into the general fund of the school district any unobligated moneys in the school building fund and that such moneys may be considered cash on hand. Certain school districts were thought to be levying taxes for their building funds, even though no current plans exist to use such funds, and if moneys are in the building fund and are needed for education, a school district should have access to them. Opponents of the bill draft pointed out that school districts will be under pressure at negotiation time to withdraw moneys in their building funds.

The committee considered a proposal that amended NDCC Section 57-15-17 to provide that moneys in a school building fund may also be used to make insurance premium payments for building insurance. No objection was made to authorizing this expenditure from school building funds.

### **Transportation Aid**

The committee considered a bill draft relating to school district transportation aid. Under current law, school districts transporting students living outside the incorporated limits of a city in which they attend school are entitled to receive 25 cents per mile for schoolbuses having a capacity of nine or fewer pupils and 67 cents per mile for schoolbuses having a capacity of 10 or more pupils. In addition, school districts receiving payments for buses having a capacity of 10 or more pupils are also entitled to 28 cents per day for each public school pupil living outside the city limits who is transported in such buses. The bill draft would have raised the amount from 28 cents to 64 cents per day. The bill draft would also have provided that no school district may receive more than 100 percent of the actual costs it incurs in the provision of transportation services. The bill draft would not have altered the current reimbursement for students who reside within the incorporated limits of a city in which they attend school and ride schoolbuses or commercial buses to and from school.

The bill draft would have required an appropriate

of an additional \$1,572,000. The committee was informed that the current range for transportation reimbursements is too great and that the 100 percent cap suggested by the bill draft is an appropriate first step in equalizing transportation payments. However, the committee determined that in these times of budgetary uncertainty, a commitment of over \$1.5 million should be examined in light of the possibility that it might be better placed elsewhere within the educational funding scheme.

### **Foundation Aid Deficiency Appropriation**

The committee considered a bill draft that provided an \$8 million deficiency appropriation to be used for foundation aid payments from January 1, 1993, to June 30, 1993. The committee was informed that in 1991-92 over 900 students unexpectedly enrolled in the state's school system, thereby creating a monetary shortfall in the range contemplated by this bill draft.

The committee members disagreed over the appropriateness of the committee attaching a funding source to the bill draft. Some committee members suggested that this was neither the time nor the place to consider raising taxes and that if legislators do what needs to be done, i.e., prioritize their spending, the \$8 million will be found. Some suggested it was not the role of a committee to recommend a tax increase without considering the state's overall budget situation. Others, however, argued that it was incumbent upon the committee to recommend a potential source for the \$8 million. Therefore, the committee amended the bill draft to impose a one percent sales tax on all items currently taxed at five percent for the period required to raise \$8 million.

### **Foundation Aid**

The committee considered a bill draft that altered the method by which educational support per pupil is calculated. The bill draft provided that per-pupil aid and the transportation payment must be added together, and from that total there would be subtracted the product of 22 mills times the latest available net assessed and equalized valuation of property in a school district and the amount that the unobligated balance of a school district's interim fund from the preceding June 30 is in excess of the amount authorized by NDCC Section 57-15-27. Under current law, these subtractions are made from per-pupil aid only and transportation payments are not considered.

The committee was informed that only five districts would be affected by this bill draft—Billings County, Spiritwood, Horse Creek, Bowline Butte, and Earle. The bill draft would involve a redistribution of approximately \$222,000. The committee questioned whether it is appropriate to send state dollars to five school districts having considerable reserves of their own. Even though the net distribution of this bill draft is comparatively small, the committee determined it was a step in the right direction with respect to equity.

### **Committee Recommendations**

The committee recommends House Bill No. 1033 to provide that any unobligated moneys in a school building fund may be considered cash on hand for

budgeting purposes during the ensuing year.

The committee recommends House Bill No. 1034 to allow school districts to use moneys in a school building fund for the payment of insurance premiums for building insurance.

The committee recommends Senate Bill No. 2035 to provide an \$8 million deficiency appropriation to be used for the purpose of making foundation aid per-pupil payments for the period beginning January 1, 1993, and ending June 30, 1993, and to impose a one percent sales tax on all items currently taxed at five percent for the period required to raise \$8 million.

The committee recommends Senate Bill No. 2036 to provide that in determining the total amount of payments due a school district for per-pupil and transportation aid, the amount of per-pupil aid and transportation aid for which a school district is eligible must be added together, and from that total there must be subtracted the product of 22 mills times the latest available net assessed and equalized valuation of property in the school district and the amount that the unobligated balance of a school district's interim fund on the preceding June 30 is in excess of the amount authorized by NDCC Section 57-15-27.

# EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under North Dakota Century Code (NDCC) Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision. The committee is allowed to solicit draft measures from interested persons during the interim and is required to make a thorough review of any measure or proposal it takes under its jurisdiction, including an actuarial review. A copy of the committee's report must accompany any measure or amendment affecting a public employees retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides that any legislation enacted in contravention of these requirements is invalid and benefits provided under that legislation must be reduced to the level in effect before enactment.

In addition to its statutory responsibility, the Legislative Council assigned one study to the committee. Senate Concurrent Resolution No. 4005 directed a study of the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement.

Committee members were Representatives Richard Kloubec (Chairman), Rick Clayburgh, Barbara Pyle, August Ritter, and Rich Wardner and Senators Bonnie Heinrich, Dan Jerome, Joe Keller, and Karen K. Krebsbach.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## CONSIDERATION OF RETIREMENT, HEALTH PLAN, AND RETIREE HEALTH PLAN PROPOSALS

The committee established April 1, 1992, as the deadline for submission of retirement, health, and retiree health proposals. The deadline provides the committee and the consulting actuary of the affected retirement, health, and retiree health programs sufficient time to discuss and evaluate the proposals. The committee limited the submission of retirement, health, and retiree health proposals considered by it to legislators and those agencies entitled to the bill introduction privilege.

The committee reviewed each submitted proposal and solicited testimony from proponents; retirement, health, and retiree health program administrators; and other interested persons. Under NDCC Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by

the committee which relates to that program. The committee referred every proposal submitted to it to the affected retirement, insurance, or retiree insurance program, which was requested to authorize the preparation of actuarial reports. The Public Employees Retirement System used the actuarial services of the Segal Company in evaluating proposals that affected retirement and retiree health programs. The Teachers' Fund for Retirement Board used the actuarial services of the Wyatt Company in evaluating proposals that affected the Teachers' Fund for Retirement. The Public Employees Retirement System used the actuarial services of William M. Mercer, Inc., in evaluating proposals that affected the public employees health insurance program. The committee obtained written actuarial information on each proposal.

In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement, health insurance, and retiree health insurance program administrators and affected individuals; the impact on state general or special funds and on the affected retirement program; and other consequences of the proposal or alternatives to it. Based on these factors, each proposal received a favorable recommendation, unfavorable recommendation, or no recommendation.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to the proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 1993 Legislative Assembly.

## Teachers' Fund for Retirement

Former NDCC Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by NDCC Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of NDCC Chapter 15-39.1. The plan is managed by the board of trustees of the Teachers' Fund for Retirement.

The Teachers' Fund for Retirement plan provides a retirement benefit of 1.39 percent of final average salary times the number of years of teaching service. Final average salary is defined as the average of the highest annual salaries for any three years of service under the fund. Full benefits are payable when the teacher has completed five years of teaching credit and is at least 65 years of age or when the teacher has a combined total of years of service credit and years of age that is equal to at least 85 if one year of that credit was completed after July 1, 1979. The plan provides for a minimum benefit for a full-time member who retired in 1971 or later of \$6 per month per year of teaching for the first 25 years of service and \$7.50 per month of teaching credit for service over 25 years.

Postretirement adjustments were provided by the Legislative Assembly in 1983, 1985, 1987, 1989, and 1991. A reduced early retirement benefit is available after five years of service. Disabled teachers are



entitled to receive a benefit equal to the greater of 20 percent of the teacher's last annual salary or a normal retirement pension computed without consideration for the disabled teacher's age.

The teacher and the teacher's employer each contribute 6.75 percent of covered salary to the plan. Employers are permitted to pay the employees' share by effecting an equal cost reduction in the gross salary of the teacher or by offsetting the contribution against future salary increases.

The latest available report of the consulting actuary was dated July 1, 1992. According to the report, on that date the fund had total assets with an actuarial value of approximately \$519.8 million and a market value of approximately \$556.1 million. Total active membership was 9,707 and total membership was 15,174. The report indicated that an employer contribution of 3.55 percent of projected fiscal 1992 compensation is necessary to meet the normal cost and payment of unfunded liability. This results in an actuarial margin of 3.20 percent, the difference between the indicated required employer contribution and the expected employer contributions of 6.75 percent.

The following is a summary of proposals affecting the Teachers' Fund for Retirement over which the committee took jurisdiction and the committee's action on each proposal:

#### **Bill No. 68**

**Sponsor:** Board of Trustees

**Proposal:** Increase benefit multiplier from 1.39 percent to 1.75 percent; postretirement benefit increase of 10 percent; add a requirement that members must have completed five years of teaching credit to be eligible for the rule of 85; increase the minimum benefit from \$6 to \$10 per month per year of teaching to 25 years and from \$7.50 to \$15 per month per year of teaching over 25 years; increase the disability annuity from the greater of 20 percent of the last annual salary or the amount computed by the retirement formula to 30 percent of the last annual salary or the amount computed by the retirement formula. The committee amended the proposal at the request of the board to change the benefit multiplier from 1.75 as originally proposed to 1.55 and to change the postretirement adjustment for individuals who on June 30, 1993, are receiving monthly benefits from the fund on an account paid under Chapter 15-39.1 or under former Chapter 15-39 from \$2 per month multiplied by the individual's number of years of credited service to \$2.50 multiplied by the individual's number of years of credited service for individuals who retired after 1979 and before 1984. Also, at the request of the board, the committee added a provision to provide that the disability benefit is self-adjusting based upon the Teachers' Fund for Retirement benefit multiplier.

**Actuarial Analysis:** The reported annual actuarial cost of the original proposal is 5.88 percent of July 1, 1992, total covered compensation. The estimated actuarial cost of the amended proposal is 3.19 percent of total covered compensation.

**Committee Report:** Favorable recommendation on the proposal as amended because the proposal provides a benefit enhancement at a reasonable cost and the actuarial margin of the Teachers' Fund for Retirement is adequate to fund the proposal.

#### **Bill No. 78**

**Sponsor:** Board of Trustees

**Proposal:** Establish a teachers' retiree health benefits fund for the purpose of prefunding and providing hospital benefits coverage and medical benefits coverage for retired eligible teachers or surviving spouses of retired eligible teachers and their dependants funded by employer contributions. The committee amended the proposal at the request of the board to remove that portion of the proposal that allows a reduction for early retirement to be calculated differently than for the retirement plan and to change the credit from \$4 to \$2.60.

**Actuarial Analysis:** The proposal has no actuarial impact on the Teachers' Fund for Retirement because the proposal is funded from employer contributions. A \$4 credit would require an employer contribution rate of 1.54 percent or a one percent employer contribution rate would provide a \$2.59 benefit.

**Committee Report:** No recommendation.

#### **Bill No. 103**

**Sponsor:** Board of Trustees

**Proposal:** Provide that interest for member assessments is one-half percent compounded monthly and repeal the provision of law that allows nonpublic schoolteachers to participate in the Teachers' Fund for Retirement. The committee amended the proposal at the request of the board to provide that interest as applied to member assessments is an annual rate of six percent compounded monthly as opposed to one-half percent compounded monthly.

**Actuarial Analysis:** The proposal has no actuarial impact on the Teachers' Fund for Retirement.

**Committee Report:** Favorable recommendation as amended because the bill has no material impact on contribution requirements.

#### **Public Employees Retirement System**

The Public Employees Retirement System is governed by NDCC Chapter 54-52. The plan is supervised by the retirement board and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1979, can choose to be members. Officials appointed to office after that date are required to be members. Most Supreme Court and district court judges are also members of the plan but receive benefits different from other members. A county, city, or school district may choose to participate on completion of an employee referendum and making an agreement with the retirement board. The plan provides for partici-

pating members other than judges to receive a retirement benefit of 1.69 percent of final average salary times the number of years of service. For judges, the normal retirement is 3.50 percent of final average salary times the first 10 years of judicial service, 2.25 percent of final average salary for the next 10 years, and 1.25 percent for service after 20 years. Final average salary is defined as the average of the highest salary received by the member for any 36 months employed during the last 10 years of employment. An employee is vested after five years of service. The normal retirement benefit is payable at age 65 or when the member has a combined total of years of service credit and years of age equal to 90. A reduced early retirement benefit is payable for vested employees who have reached age 55. Disability retirement benefits are payable to members who become permanently and totally disabled after completing at least 180 days of eligible employment. Disability benefits are calculated at 25 percent of the member's final average salary with a minimum monthly disability retirement benefit of \$100.

The employer contributes 4.12 percent of covered salary to the plan and the employee contributes four percent. For many employees, no deduction is made from pay for the employee's share. This is the result of 1983 legislation that provided for a phased-in "pickup" of the employee contribution in lieu of a salary increase at that time. The 1989 Legislative Assembly established a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired members of the Public Employees Retirement System and the Highway Patrolmen's Retirement System receiving retirement benefits or surviving spouses of those retired members who were eligible to receive, or were receiving, retirement benefits, reduced the employer contribution under the Public Employees Retirement System from 5.12 percent to 4.12 percent and under the Highway Patrolmen's Retirement System from 17.70 percent to 16.70 percent or one percent of the monthly salaries or wages of participating members, including participating Supreme Court and district court judges, and redirected those moneys to the retiree health benefits fund by requiring the state and other participating employers to contribute one percent of monthly salaries and wages to the health benefits fund.

The latest available report of the consulting actuary is dated July 1, 1992. According to the report, on that date the Public Employees Retirement System had net assets with an actuarial value of \$416,263,842, with a market value of \$448,234,115. Total active membership was 14,826 (14,758 persons other than judges or National Guard security officers or firefighters, 27 judges, and 41 National Guard security officers or firefighters). The report indicated that an employer contribution of 3.64 percent of projected fiscal 1992 compensation is necessary to meet the normal cost associated with nonjudge members. This results in an actuarial margin of .48 percent of total covered compensation, the difference between the indicated required employer contribution and the statutory 4.12 percent.

The report for the judges' retirement system indi-

cated that an employer contribution of 12.46 percent of payroll is required to fund the system. The statutory employer contribution rate is 12.52 percent of salary. This results in an actuarial margin of .06 percent of total covered compensation.

The report for the National Guard retirement system indicated that an employer contribution of 5.89 percent of payroll is required to fund the system. The statutory contribution rate is 5.87 percent of salary. This results in an actuarial deficit in the margin of .02 percent of total covered compensation.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement fund is dated July 1, 1992. According to the report, on that date the Highway Patrolmen's retirement fund had net assets with an actuarial value of \$15,269,485, with a market value of \$16,442,226. Total active membership was 114 and an employer contribution of 14.13 percent of payroll is necessary to meet the normal cost of the Highway Patrolmen's retirement fund. The statutory contribution rate is 16.70 percent of payroll. Thus, the actuarial margin is 2.57 percent of payroll.

The latest available report of the consulting actuary for the Public Employees Retirement System retiree health benefits fund is dated July 1, 1992. According to the report, on that date the Public Employees Retirement System retiree health benefits fund had net assets with a market value of \$5,126,265. Total active membership was 14,940 (6,309 men and 8,631 women). An employer contribution of .78 percent of payroll is required to fund the plan. The statutory contribution rate is 1.00 percent of payroll. This results in an actuarial margin of .22 percent of payroll.

The following is a summary of the proposals affecting the Public Employees Retirement System over which the committee took jurisdiction and the committee's action on each proposal:

## **I. Public Employees Retirement System Main System**

### **Bill No. 90**

**Sponsor:** Retirement Board

**Proposal:** Revise the definition of temporary employee; revise prior service repurchase provisions; provide that employees of the Public Employees Retirement System and the Retirement and Investment Office may not serve on the Public Employees Retirement System Board; provide that no more than one member of the Public Employees Retirement System Board may be from the same agency; provide that board members are entitled to receive the same compensation as provided members of the Legislative Council; provide that postponed retirement date for National Guard security officers or firefighters is the first day of the month next following the month in which the member actually severs or has severed employment after reaching the normal retirement date; provide that disability retirement benefits are the greater of 25 percent of the member's final average salary or the benefit accrued had the member reached normal retirement date at the date of disability; provide that a

spouse may elect a preretirement death benefit of the greater of 50 percent of the member's single life accrued benefit or a benefit equal to the 100 percent joint and survivor benefit payable as if the member had been eligible for early retirement; clarify that purchase of additional credit is based upon the actuarial cost of the credit being purchased; revise the confidentiality of records provisions under the Public Employees Retirement System; provide a continuing appropriation for certain retirement and uniform group insurance program benefits. The committee amended this proposal at the request of the board to remove the new alternative preretirement death benefit and the change in the disability benefit.

**Actuarial Analysis:** The reported annual actuarial cost of the original proposal was .12 percent of covered payroll for the new alternative preretirement death benefit and .13 percent of covered payroll for the changed disability benefit. The proposal, as amended, has no actuarial cost impact.

**Committee Report:** Favorable recommendation as amended.

#### Bill No. 91

**Sponsor:** Retirement Board

**Proposal:** Allow the Public Employees Retirement System Board to determine the employer contribution for National Guard security officers or firefighters.

**Actuarial Analysis:** To make the benefit formula the same for National Guard security officers or firefighters as it is for members of the Public Employees Retirement System main system would require an additional .63 percent of covered payroll funded by the Department of Defense.

**Committee Report:** Favorable recommendation.

#### Bill No. 94

**Sponsor:** Senator Bonnie Heinrich

**Proposal:** Implement a rule of 88 for calculating normal retirement date under the Public Employees Retirement System.

**Actuarial Analysis:** The reported actuarial cost impact is .27 percent of covered payroll.

**Committee Report:** Unfavorable recommendation because the available margin is not sufficient to fund the proposal if the proposals recommended by the Public Employees Retirement System Board are enacted.

#### Bill No. 112

**Sponsor:** Retirement Board

**Proposal:** Increase benefit multipliers applicable to supreme and district court judges.

**Actuarial Analysis:** The reported actuarial cost impact is 2.30 percent of covered payroll.

**Committee Report:** Unfavorable recommendation because the Public Employees Retirement System Board has withdrawn its support for the

proposal.

#### Bill No. 114

**Sponsor:** Retirement Board

**Proposal:** Increase benefit multiplier from 1.69 percent to 1.85 percent and provide a prior service retiree adjustment of 9.47 percent of the present benefit for prior service retirees who are receiving benefits from the Public Employees Retirement System. The committee amended this proposal at the request of the board to change the proposed benefit multiplier from 1.85 percent to 1.74 percent and to change the prior service retiree adjustment from 9.47 percent to 3.00 percent of an individual's present benefit.

**Actuarial Analysis:** The reported actuarial cost impact of the original proposal is 1.55 percent of covered payroll. The actuarial cost impact of the amended proposal is .48 percent of covered payroll.

**Committee Report:** Favorable recommendation on the proposal as amended because the proposal provides a benefit enhancement at a reasonable cost.

#### Bill No. 118

**Sponsor:** Representative Richard Kunkel

**Proposal:** Provide that individuals receiving early retirement benefits prior to July 1, 1985, and who, at retirement, had a combined total of years of service credit and years of age equal to at least 90 are entitled to receive normal retirement benefits under the Public Employees Retirement System.

**Actuarial Analysis:** The reported actuarial cost impact is .01 percent of covered payroll.

**Committee Report:** Unfavorable recommendation because retroactive liberalization of retirement eligibility such as proposed in this bill can be viewed as inequitable by retirees who chose to defer retirement in order to take advantage of anticipated changes such as the rule of 90.

## II. Highway Patrolmen's Retirement System

#### Bill No. 115

**Sponsor:** Retirement Board

**Proposal:** Increase benefit multiplier from 2.83 percent to 3.15 percent of final average salary for the first 25 years of service and provide a postretirement increase in the benefit multiplier from 2.75 percent to 3.15 percent of final average salary. The committee amended this proposal at the request of the board to change the proposed multiplier from 3.15 percent of payroll to 2.96 percent of payroll.

**Actuarial Analysis:** The reported actuarial cost impact of the original proposal is 5.13 percent of covered payroll. The actuarial cost impact of the amended proposal is 2.08 percent of covered payroll.

**Committee Report:** Favorable recommendation, as amended, because the proposal provides a benefit enhancement at a reasonable cost.

### III. Old-Age and Survivor Insurance System

#### Bill No. 107

**Sponsor:** Job Service North Dakota

**Proposal:** Increase Old-Age and Survivor Insurance System benefits by \$20 per month for fiscal year 1993 and by an additional \$20 for fiscal year 1994.

**Actuarial Analysis:** Job Service North Dakota indicated that the proposal would increase benefit payments by \$21,180 during the biennium beginning July 1, 1993, and ending June 30, 1995.

**Committee Report:** Favorable recommendation.

### IV. Prefunded Retiree Health Benefits Fund

#### Bill No. 87

**Sponsor:** Public Employees Retirement System

**Proposal:** Increase the monthly credit toward hospital and medical benefits coverage under the retiree health benefits fund from \$4 to \$4.50.

**Actuarial Analysis:** The reported actuarial cost impact is .11 percent of covered compensation.

**Committee Report:** Favorable recommendation.

#### Bill No. 117

**Sponsor:** Representative Richard Kunkel

**Proposal:** Allow a surviving spouse to receive for life the member's credit for hospital and medical benefits coverage under the retiree health benefits fund provided neither received a single lump sum retirement payment.

**Actuarial Analysis:** The reported actuarial cost impact is .07 percent of covered payroll.

**Committee Report:** No recommendation because although the proposal has merit it would have an adverse impact on the prefunded retiree health benefits fund.

### V. Pre-Tax Benefits Program

#### Bill No. 93

**Sponsor:** Retirement Board

**Proposal:** Establish a dental and vision insurance program for public employees.

**Actuarial Analysis:** The proposal has no actuarial cost impact.

**Committee Report:** Favorable recommendation.

### VI. Deferred Compensation Plan

#### Bill No. 113

**Sponsor:** Retirement Board

**Proposal:** Allow the Public Employees Retirement System Board to adopt rules governing and implementing the deferred compensation plan.

**Actuarial Analysis:** The proposal has no actuarial cost impact.

**Committee Report:** No recommendation.

### VII. Uniform Group Insurance Program

#### Bill No. 8

**Sponsor:** Senator Tim Mathern

**Proposal:** Allow employees of counties, cities, school districts, or district health units not participating in the uniform group insurance program to participate in the program. The committee amended this proposal at the request of Senator Mathern to include medical underwriting requirements established by the Retirement Board and to allow the board to use risk adjusted premiums for individual insurance contracts.

**Actuarial Analysis:** Allowing individuals to become members of the group increases the financial risk to the plan. The proposal, as amended, would have no adverse actuarial impact on the fund.

**Committee Report:** Favorable recommendation.

#### Bill No. 85

**Sponsor:** Retirement Board

**Proposal:** Provide that claims for health care services must be made in accordance with fee schedules adopted by the Retirement Board; provide that fees in excess of fee schedules may not be recovered by providers; provide that health care services not medically necessary may not be reimbursed; define the term "medically necessary" for purposes of the uniform group insurance program. The committee amended this proposal at the request of the board to revise the definition of "medically necessary," provide that a health care provider may recover the cost of a service that is determined not to be medically necessary from an individual receiving the service if there is written consent by the individual that the individual accepts financial responsibility for the service, and to define the term "provider" for purposes of the proposal as including hospitals, physicians, and other health care professionals.

**Actuarial Analysis:** The financial effect on the Public Employees Retirement System would be positive, with savings dependent upon the exact nature of fee schedules for physicians, per diem or diagnostic related group reimbursement for hospitals, or other similar arrangements. Each one percent of savings of the total plan cost would project to a savings of \$1.2 million to \$1.4 million in the 1993-95 biennium.

**Committee Report:** No recommendation.

#### Bill No. 86

**Sponsor:** Retirement Board

**Proposal:** Prohibit health care providers from providing discounts to members of the uniform group insurance program.

**Actuarial Analysis:** The proposal would have a positive effect on the Public Employees Retirement

ment System. Such "discount offers" encourage overutilization, circumvent basic plan design, and negatively affect cost containment efforts by removing the patient from financial accountability.

**Committee Report:** Favorable recommendation.

**Bill No. 88**

**Sponsor:** Retirement Board

**Proposal:** Provide that agencies that offer employee assistance programs must utilize the employee assistance program developed by the Retirement Board and allow the Retirement Board to include an employee assistance program as a part of the uniform group insurance program.

**Actuarial Analysis:** The proposal would have a positive impact on the Public Employees Retirement System to the extent the employee assistance program is properly coordinated with plan provisions for utilization of the most appropriate medical facility to provide the necessary service at reasonable cost.

**Committee Report:** Favorable recommendation.

**Bill No. 89**

**Sponsor:** Retirement Board

**Proposal:** Allow the board to develop and sponsor a managed health care program.

**Actuarial Analysis:** The proposal would have a positive actuarial impact on the Public Employees Retirement System in that it has the ability to moderate future cost increases. Each one percent savings in total plan costs is projected to produce savings of \$1.2 million to \$1.4 million in the 1993-95 biennium. Exact savings will depend on the managed care concepts implemented but a conservative estimate of potential savings would be in the range of 10 percent to 15 percent of total plan costs.

**Committee Report:** No recommendation.

**Bill No. 92**

**Sponsor:** Retirement Board

**Proposal:** Revise enrollment procedures for the uniform group insurance program and revise the procedures under which political subdivisions may participate in the uniform group insurance program.

**Actuarial Analysis:** The actuary reported that a reasonable estimate of plan savings under this bill is 1.00 percent.

**Committee Report:** Favorable recommendation.

**Bill No. 119**

**Sponsor:** Senators Bonnie Heinrich and Tim Mathern and Representative Rich Wardner

**Proposal:** Allow eligible employees of school districts to participate in the uniform group insurance program funded by employer contributions. The committee amended this proposal at

the request of the sponsors to provide that for purposes of the proposal, alternate insurance coverage means insurance coverage that is comparable to or better than that provided under the uniform group insurance program for eligible employees, spouses of eligible employees, and dependent children of eligible employees and that cost sharing paid by eligible employees under alternate insurance coverage, including deductibles, coinsurance payments, copayments, and premiums, may not be more than the cost sharing paid by eligible employees under the uniform group insurance program pursuant to NDCC Section 54-52.1-06.

**Actuarial Analysis:** The proposal would have no actuarial impact on the Public Employees Retirement System because the proposal is funded from employer contributions.

**Committee Report:** No recommendation because the committee lacks the requisite statistics to make a decision on the proposal.

**CONSOLIDATION OF THE RETIREMENT AND INVESTMENT OFFICE, PUBLIC EMPLOYEES RETIREMENT SYSTEM, AND TEACHERS' FUND FOR RETIREMENT**

The impetus for this study was the passage of Senate Bill No. 2030 by the 1989 Legislative Assembly and the passage of Senate Bill No. 2078 by the 1991 Legislative Assembly. Generally, 1989 Senate Bill No. 2030 established the State Retirement and Investment Office to coordinate the activities of the State Investment Board and the Teachers' Fund for Retirement and transfer responsibility for investment of moneys of the Public Employees Retirement System from funding agents under contract with the Public Employees Retirement System to the State Investment Board. This bill, as enacted, contained an expiration date of July 1, 1991.

Senate Bill No. 2078 as recommended by the Legislative Council's interim Retirement Committee and submitted to the 1991 Legislative Assembly by the Legislative Council, would, among other things, have made the establishment of the State Retirement and Investment Office permanent by repealing the sunset provisions placed on 1989 Senate Bill No. 2030 and by making the repeal retroactive to June 29, 1991. However, as enacted, the bill is only effective through June 30, 1993.

**Background**

The idea of consolidating functions of the various retirement programs in the state is not new. For example, the 1985 Legislative Assembly passed a concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating the various public employees retirement funds in the state for the purpose of providing more effective management and investment of public employees retirement funds. That study resolution was prioritized by the Legislative Council; however, the study was not pursued at that time. A 1969-70 interim committee of the Legislative Council studied the feasibility of a merger of the state employees retire-

ment fund, the teachers' insurance and retirement fund, and the Highway Patrolmen's retirement fund. Although the committee concluded that such a merger would not be "practical," an actuarial consultant to the committee recommended that the investment portfolios, administration, and recordkeeping functions of the three retirement funds be placed under one management.

### **1989 Senate Bill No. 2030**

During the 1987-88 interim, representatives of the Office of Management and Budget testified before the committee on Public Employees Retirement Programs that the retirement system goals and investment objectives of the Public Employees Retirement System and the Teachers' Fund for Retirement are similar in many respects and that possible administrative efficiencies and cost savings might be realized through the consolidation of various organizational and investment functions of the Public Employees Retirement System, the Teachers' Fund for Retirement, and the State Investment Board. In recognition that a consolidation decision of this nature should be made by the Legislative Assembly in close consultation with the affected boards, the interim committee recommended 1989 House Concurrent Resolution No. 3006 to direct the Legislative Council to study the feasibility and desirability of various options relating to the consolidation of various organizational and investment functions of the Public Employees Retirement System, the Teachers' Fund for Retirement, and the State Investment Board. That study resolution was passed by the Legislative Assembly but not prioritized by the Legislative Council in light of an identical study mandated by 1989 Senate Bill No. 2030.

As introduced at the request of the Office of Management and Budget, 1989 Senate Bill No. 2030 would have created a State Retirement and Investment Office to coordinate the activities of the State Investment Board, Public Employees Retirement System, and Teachers' Fund for Retirement. The office would have been governed by an administrative board consisting of five members from the Teachers' Fund for Retirement Board, five members from the Public Employees Retirement System Board, including all of the elected board members, the Governor or the Lieutenant Governor if so designated by the Governor, the Commissioner of University and School Lands, the director of the Workers Compensation Bureau, and the Commissioner of Insurance. Each board would have maintained its separate legal identity and authority under the bill as introduced; however, the administrative board would have been empowered to "do all things necessary to coordinate the activities of the State Investment Board, the Teachers' Fund for Retirement, and the Public Employees Retirement System to achieve cost savings and promote efficiency." The bill as introduced would also have restructured the State Investment Board to include three members of the Teachers' Fund for Retirement Board and three elected members of the Public Employees Retirement System Board. The present requirement that three members of the State Investment Board be experienced in and have considerable knowledge of the field of investments would

have been eliminated in favor of authorizing the State Investment Board to establish an advisory council composed of individuals experienced and knowledgeable in the field of investments.

Under the bill as introduced, the Public Employees Retirement System fund would have been included as a fund under the management of the State Investment Board. The bill provided that the board could commingle the moneys of the individual funds for investment purposes when deemed advantageous and could provide investment services to any other agency, institution, or political subdivision of the state. The bill required that the State Investment Board invest the funds belonging to the Teachers' Fund for Retirement and the Public Employees Retirement System in accordance with those funds' investment goals and objectives and required the board to develop an asset allocation plan for each fund in accordance with the investment goals and objectives of each respective fund, subject to the approval of the governing body of each fund.

The bill as introduced would also have deleted references in NDCC Chapter 54-52 requiring the Public Employees Retirement System Board to appoint an executive director and authorizing the board to create whatever staff it deems necessary for the administration of the Public Employees Retirement System.

The 1989 bill encountered opposition in the Senate Committee on State and Federal Government from some members of the Public Employees Retirement System Board, the North Dakota Public Employees Association, the Association of Former Public Employees, and the Association of Federal, State, County, and Municipal Employees. A compromise was reached in the form of substantial amendments to 1989 Senate Bill No. 2030 which were adopted in the Senate, and the bill was ultimately passed by both the Senate and the House of Representatives. A proposed amendment to the bill considered late in the session by the House Committee on State and Federal Government would have replaced the State Investment Board with a State Investment Office governed by a board chaired by the Lieutenant Governor and consisting of four members with expertise and experience in the field of investments. The office would have managed the Public Employees Retirement System fund and funds previously managed by the State Investment Board, including the Teachers' Fund for Retirement, and would otherwise have been granted the powers and duties of the State Investment Board. Those opposing the proposed amendments cited the lack of direct involvement of the governing bodies of the retirement funds and the late date during the session as reasons for opposing the amendments.

Senate Bill No. 2030 as passed by the Legislative Assembly established the State Retirement and Investment Office; however, the scope of the office is to coordinate only the activities of the State Investment Board and the Teachers' Fund for Retirement, and not the Public Employees Retirement System. However, the bill did transfer responsibility for investment of moneys of the Public Employees Retirement System from funding agents under contract with the Public Employees Retirement System to the State Investment Board. The administrative board created

to oversee and operate the State Retirement and Investment Office consists of the Governor or a designee of the Governor, the State Treasurer, and the president of the Teachers' Fund for Retirement Board of Trustees. The bill also created a special fund for the purpose of defraying administrative expenses of the office, which is funded through payments from the funds, such as the Public Employees Retirement System fund and the Teachers' Fund for Retirement, under the management of the State Investment Board. Senate Bill No. 2025 (1989) appropriated \$1,978,681 from this special fund to the State Retirement and Investment Office for the 1989-91 biennium. The bill restructured the membership of the State Investment Board by replacing the executive secretary of the Teachers' Fund for Retirement with three members of the the Teachers' Fund for Retirement Board or the board's designees and replaced the three members of the State Investment Board who are members based on their experience and knowledge of the field of investments with three elected members of the Public Employees Retirement System Board. However, the State Investment Board is authorized to establish an advisory council composed of individuals who are experienced and knowledgeable in the field of investments and to determine the responsibilities of that council. The bill removed the authority of the State Investment Board to appoint an investment director or advisory service.

With respect to investment functions, 1989 Senate Bill No. 2030 required the State Investment Board to develop an asset allocation plan for each fund in accordance with the investment goals and objectives of each fund, subject to the approval of the governing body of each fund. The bill required that the retirement funds belonging to the Teachers' Fund for Retirement and the Public Employees Retirement System be invested exclusively for the benefit of their members and in accordance with the respective funds' investment goals and objectives.

#### **Statutory Provisions in Existence if 1989 Senate Bill No. 2030 Expires Public Employees Retirement System**

If 1989 Senate Bill No. 2030 expires, the provisions of law governing the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board that were in effect before the enactment of 1989 Senate Bill No. 2030 will again be in effect.

The Public Employees Retirement System is governed by NDCC Chapter 54-52. The plan is supervised by the Retirement Board and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. The Retirement Board consists of seven voting members—a chairman appointed by the Governor, a member appointed by the Attorney General from the Attorney General's legal staff, the State Health Officer, three members elected by and from among the active participating members, and a member elected by and from among persons receiving or eligible to receive Public Employees Retirement System retirement benefits. The board is granted the powers and privileges of a corporation and is required to appoint an executive director and to authorize the employment of

whatever staff it deems necessary for the sound and economical administration of the system. The board is required to arrange for actuarial and medical advisors for the system. In addition to its duties associated with the retirement system, the board administers the uniform group insurance program and the deferred compensation plan for public employees. If 1989 Senate Bill No. 2030 expires, the board would again be required to select funding agents and establish an investment contract for the purpose of holding and investing moneys for the system.

#### **Teachers' Fund for Retirement**

Former NDCC Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by NDCC Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of NDCC Chapter 15-39.1. The plan is managed by the board of trustees of the Teachers' Fund for Retirement.

The Teachers' Fund for Retirement Board consists of the State Treasurer, the Superintendent of Public Instruction, and three persons appointed by the Governor, one of whom must be a full-time school administrator, one of whom must be actively employed as a full-time classroom teacher or school counselor, and one of whom must be a retired member of the fund. The investment of the fund is under the supervision of the State Investment Board. If 1989 Senate Bill No. 2030 expires, the board would again be enabled to employ an administrator who would perform such duties as the board prescribes.

#### **State Investment Board**

The State Investment Board was established by the 1963 Legislative Assembly following an interim study of the investment of state funds. Before the enactment of 1989 Senate Bill No. 2030, the State Investment Board consisted of the Governor, the State Treasurer, the Commissioner of University and School Lands, the director of the Workers Compensation Bureau, the Commissioner of Insurance, the executive secretary of the Teachers' Fund for Retirement, and three members who were experienced in and had considerable knowledge of the field of investments. Senate Bill No. 2030 (1989) replaced the executive secretary of the Teachers' Fund for Retirement Board with three members of the Teachers' Fund for Retirement Board and required that the three members of the Public Employees Retirement System Board be elected members but eliminated the requirement that they have experience in and considerable knowledge of the field of investments. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' Fund for Retirement.
3. State fire and tornado fund.
4. Workers' compensation fund.
5. Veterans Home improvement fund.
6. National Guard training area and facility development trust fund.
7. National Guard tuition trust fund.

In addition to the funds enumerated above, 1989 Senate Bill No. 2030 requires the State Investment Board to manage the Public Employees Retirement System fund and the insurance regulatory trust fund. The board is required to approve general types of securities transactions on behalf of the enumerated funds and representatives of those funds may make recommendations to the board in regard to investments. The board was authorized to appoint an investment director and advisory service and other needed personnel. The investment director was authorized to make investments of funds under the management of the board and was required to formulate and recommend investment regulations to the board concerning the nature of investments and limitations upon methods for investment which should govern the investments of funds. Senate Bill No. 2030 eliminated the authority of the State Investment Board to appoint an investment director and requires the State Investment Board to develop an asset allocation plan for each plan in accordance with the investment goals and objectives of the fund, subject to the approval of the governing body of that fund. The State Investment Board is required to apply the prudent investor rule in investing for funds under its supervision.

#### **Potential for Efficiencies in Combining Administrative and Investment Functions**

The Office of Management and Budget prepared a report entitled "Report on the Administrative Consolidation of the Teachers' Fund for Retirement, Public Employees Retirement System, and State Investment Board into the State Retirement and Investment Office," dated December 1988, which examines the potential for combining the administrative and investment functions of the Public Employees Retirement System, the Teachers' Fund for Retirement, and the State Investment Board. The report concludes that:

1. The three agencies share similar goals and objectives.
2. The three agencies have similar investment objectives and utilize modern portfolio management techniques.
3. Consolidation of the administrative functions of the three agencies would reduce the need for additional staff while putting into place an organization that responds to all the requested needs plus some future needs (the proposed structure incorporates internal audit functions and planning functions).
4. A larger investment pool will reduce the cost of investing funds.
5. Consolidation of the administrative and investment functions could be accomplished without altering the Teachers' Fund for Retirement and Public Employees Retirement System boards. Each of the boards would retain its authority for designing and managing its respective benefits plan.
6. Each retirement fund would maintain its individual autonomy.
7. Total organizational and investment savings would be \$560,252 a year. If these funds were retained in their respective funds and achieved

a rate of return consistent with their objective, an additional \$57,929,722 would be in the funds at the end of 30 years.

#### **1989-90 Study of Options Relating to the Consolidation of Organizational and Investment Functions**

The 1989-90 Committee on Public Employees Retirement Programs received information from representatives of the State Retirement and Investment Office and the Public Employees Retirement System throughout the 1989-90 interim concerning the progress made with respect to the implementation of 1989 Senate Bill No. 2030. Representatives of the State Retirement and Investment Office reported that through June 30, 1990, the creation of the Retirement and Investment Office had resulted in administrative savings of \$182,399 and investment savings of \$158,928 for a total of \$341,327 of savings from the 1989-91 budget request. However, the commingling of moneys, which results in savings, was not complete at the end of the fiscal year ending June 30, 1990. Representatives of the Retirement and Investment Office reported that two of the commingled accounts have been in effect the entire year while most accounts have been commingled for only six months. At the close of the fiscal year ended June 30, 1990, all of the active fixed income accounts had been commingled. Other accounts include real estate, international fixed income, indexed equity, and one new equity account. Representatives of the Retirement and Investment Office reported that increased savings were expected as the equity accounts become commingled by July 1, 1991.

#### **1991 Senate Bill No. 2078**

Senate Bill No. 2078, as recommended by the 1989-90 interim Committee on Public Employees Retirement Programs, would have made the establishment of the State Retirement and Investment Office permanent by repealing the sunset provisions placed on 1989 Senate Bill No. 2030 and made the repeal retroactive to June 29, 1991. This provision of the bill was replaced with a July 1, 1993, sunset provision. The bill eliminated the Retirement and Investment Office Board and transferred the administrative responsibilities of that board to the State Investment Board. The bill would have established that the policies on investment goals and objectives and asset allocation for each fund must be approved by the governing body of that fund and the State Investment Board by January 1 of each year to be effective. If policies were not approved, the previous policies on investment goals and objectives and asset allocation would have remained in effect. This provision of the bill was amended to provide that if the asset allocation is not approved, the previous asset allocations remain effective and that the governing body of each fund administered by the State Investment Board must use the staff and consultants of the Retirement and Investment Office in developing asset allocations and investment policies. The bill provided that the governing body of each fund must use the staff and consultants



of the Retirement and Investment Office in developing those policies.

### **Other States' Consolidation Activity and Investment Provisions**

#### **South Dakota**

South Dakota is an example of a state that has engaged in consolidation activity with respect to state retirement programs. In 1974 South Dakota consolidated its eight state-administered systems and six municipal programs. The consolidation merged the Supreme and Circuit Court Judicial Retirement System, District County Court and Municipal Court Judges Retirement Program, South Dakota Teachers Retirement System, South Dakota Municipal Retirement System, South Dakota Law Enforcement Retirement System, and the South Dakota Public Employees Retirement System into a consolidated system known as the South Dakota Retirement System. Each system granted different benefits, required different levels of contributions by the employer and employee, had unique membership eligibility requirements, and mandated various funding and investment policies. Because the average benefits for retired public employees under the systems was a maximum of \$80 per month in 1974 with average benefits substantially less, one of the major objectives of the consolidation was improvement of retirement benefits. The consolidated system is administered by a 16-member board of trustees composed of members and several appointed state officials.

The South Dakota consolidated system has two classes of members—Class A for general employees and teachers and Class B for law enforcement officers and judges. All previous state systems were merged into the new plan and local systems were given the option of joining, but no new local plans can be established. Benefits and contribution rates differ slightly between the classes, but both have the same disability and death benefits, vesting rights, and postretirement increases. All benefits are integrated with Social Security and an actuarial evaluation is made biennially. A “one-time” appropriation of \$10.5 million (provided over three years) was necessary to fund benefit improvements and to bring all systems to the same funding level. The board of trustees is authorized to appoint an administrator for the system. The state’s investment office, known as the State Investment Council, is responsible for investing the assets of the retirement system and is authorized to pool the retirement funds for investment purposes. The State Investment Council consists of seven voting members, five of whom are appointed by the executive board of the state’s Legislative Research Council, the State Treasurer, and a representative of the board of trustees of the South Dakota Retirement System.

#### **Montana**

The Montana Public Employees’ Retirement Board administers seven of the state’s eight public retirement systems. The second largest state system, the Teachers’ Retirement System, has a separate board. Systems administered by the Public Employees’ Retirement Board include the Public Employees’ Retirement System, Highway Patrol Retirement, Sheriffs’

Retirement, Game Wardens’ Retirement, Police Retirement, Volunteer Firefighters’ Retirement, and Firefighters’ Unified Retirement plans. The Montana Public Employees’ Retirement Board consists of six members appointed by the Governor, including three public employees who are active members of a public retirement system, a retired public employee, and two members at large. The Teachers’ Retirement Board consists of six members appointed by the Governor, including the Superintendent of Public Instruction, two persons from the teaching profession who are members of the Teachers’ Retirement System, two persons appointed as representatives of the public, and one member who is a retired teacher and a member of the retirement system at the time of retirement.

All state investments in Montana, including pension funds, are controlled by the Montana Board of Investments. The Board of Investments is composed of nine members appointed by the Governor, including one member from the Public Employees’ Retirement Board, one member from the Teachers’ Retirement Board, and seven members “who will provide a balance of professional expertise and public interest and accountability and who are informed and experienced in the subject of investments and who are representative of the financial community, small business, agriculture, and labor.” The Board of Investments is authorized to employ an investment officer, an assistant investment officer, and an executive director who have general responsibility for the selection and oversight of the board’s staff and for direct investment and economic development activities.

#### **Minnesota**

Minnesota is similar to Montana in that the various existing public retirement plans or funds are invested by a state board. Minnesota requires each executive director administering a retirement fund or plan, from time to time, to certify to the State Board for Investment those portions of the assets of the retirement fund or plan which in the judgment of that director are not required for immediate use. The board invests those funds pursuant to a statutory list of authorized investments.

The Minnesota State Board of Investment is created under the Minnesota Constitution for the purpose of administering and directing the investment of all state funds and pension funds. The board consists of the Governor, State Auditor, State Treasurer, Secretary of State, and Attorney General. The board selects an executive director to administer and invest the money available for investment. Minnesota has also created an Investment Advisory Council consisting of 17 members, including 10 members appointed by the board who are experienced in general investment matters, and the Commissioner of Finance, the executive director of the Minnesota State Retirement System, the executive director of the Public Employees Retirement Association, the executive director of the Teachers’ Retirement Association, a retiree receiving benefits under the state’s postretirement investment fund, and two public employees who are active members of funds whose assets are invested by the state board. The advisory council advises the board and the director on general policy matters

relating to investments and on methods to improve the rate of return on invested money while ensuring adequate security. The state has established the "Minnesota Combined Investment Funds" for the purpose of providing investment vehicles for assets of the participating funds, which is managed by the board. The public retirement plans and funds participating in the Minnesota Combined Investment Funds include the State Employees' Retirement Fund, Correctional Employees' Retirement Plan, State Patrol Retirement Fund, Public Employees' Retirement Fund, Public Employees' Police and Fire Fund, Teachers' Retirement Fund, and the Judges' Retirement Fund.

### **Testimony and Committee Considerations**

The committee received information from representatives of the State Retirement and Investment Office and the Public Employees Retirement System Board concerning the implementation of 1989 Senate Bill No. 2030. Representatives of the State Retirement and Investment Office reported that as of June 30, 1991, the creation of the State Retirement and Investment Office had resulted in savings of \$656,927 for the most recent year. These savings were the result of efficient accounting for assets under management of the State Investment Board, administrative savings, and savings on investment fees. As a result of the creation of the State Retirement and Investment Office, the State Investment Board has pooled the investment of the Teachers' Fund for Retirement, Public Employees Retirement System, and the city of Bismarck funds managed under contract. Representatives of the State Retirement and Investment Office reported that as of June 30, 1992, the creation of the State Retirement and Investment Office had resulted in savings of \$783,904 for the most recent year. Representatives of the State Retirement and Investment Office reported that additional savings are expected as the funds under the management of the State Retirement and Investment Office increase.

The committee studied four proposals concerning the consolidation of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement. One proposal would have implemented a consolidation of the Retirement and Investment Office, Teachers' Fund for Retirement, Public Employees Retirement System, and State Investment Board as originally envisioned by the Office of Management and Budget in 1989. Another proposal would have made the Retirement and Investment Office permanent and required the State Retirement and Investment Office, Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board to collocate offices. A third proposal would have repealed the expiration date applicable to the Retirement and Investment Office, and, in effect, would have made the Retirement and Investment Office permanent as it now exists. A fourth proposal would have extended the State Retirement and Investment Office through June 30, 1995, and after that date make it ineffective. Under this proposal, the statutory provisions relating to the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board

that existed before enactment of 1989 Senate Bill No. 2030 and 1991 Senate Bill No. 2078 will again become law when the provisions of 1989 Senate Bill No. 2030 and 1991 Senate Bill No. 2078 expire unless the 1995 Legislative Assembly otherwise determines.

Representatives of the State Investment Board and the Teachers' Fund for Retirement Board testified that both boards supported removing the expiration date from the Retirement and Investment Office and thus, in effect, making the office permanent. Representatives of the Retirement and Investment Office indicated that the office may have trouble recruiting new employees if the office is only extended for two years instead of becoming a permanent state agency. Also, the Retirement and Investment Office may experience budgeting problems if the agency is not made permanent.

Representatives of the Public Employees Retirement System Board testified that the board supports the repeal of the Retirement and Investment Office expiration date, thus making the consolidation permanent. They indicated that the Public Employees Retirement System is primarily a retirement system while the Retirement and Investment Office is primarily an investment office. The Public Employees Retirement System operates the uniform group insurance plan, the deferred compensation program, the life insurance program, the prefunded retiree health benefits program, and the flexible or pre-tax benefits program which do not have corresponding programs within the Teachers' Fund for Retirement or the State Investment Board and thus these functions should remain separate. The only area where the two systems overlap is in the provision of retirement benefits.

Representatives of the North Dakota Retired Teachers Association, Association of Former Public Employees, the Independent State Employees Association, the North Dakota Public Employees Association, and the North Dakota Education Association questioned whether any further economies of scale or efficiencies could be realized by further consolidations and that the respective boards may lose their influence in the retirement process if further consolidations are accomplished and as a result the members of the respective groups may suffer.

Representatives of the Public Employees Retirement System Board testified that the board did not favor the proposal to collocate the Retirement and Investment Office, Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board.

Several members of the committee suggested that the State Retirement and Investment Office should be extended for another two-year period during which the implementation of 1989 Senate Bill No. 2030 could be reviewed further and that the 1995 Legislative Assembly could then determine whether the office should be made permanent.

Representatives of the Public Employees Retirement System Board testified that the Retirement Board should be allowed to appoint an alternate designee with full voting privileges from the board to attend meetings of the State Investment Board when a selected member is unavailable and that the Teachers' Fund for Retirement Board should be allowed to

appoint an alternate designee with full voting privileges to attend meetings of the State Investment Board when a member selected by the Teachers' Fund for Retirement Board is unavailable to attend meetings of the State Investment Board.

### **Recommendation**

The committee recommends House Bill No. 1035 to extend the establishment of the State Retirement and Investment Office for a period of two years and to provide that the Public Employees Retirement System Board may appoint an alternate designee with full voting privileges from the Public Employees Retirement System Board to attend meetings of the State Investment Board when a selected member is unavailable and that the Teachers' Fund for Retirement Board may appoint an alternate designee with full voting privileges to attend meetings of the State Investment Board when a selected member is unavailable.

### **1991 HOUSE BILL NO. 1392**

The committee received a report regarding the determination of the Public Employees Retirement System Board concerning the effectiveness of 1991 S.L. Chapter 632 (1991 House Bill No. 1392). This bill, if effective, would have increased the benefit multiplier for service credit, prior service credit, and retiree benefits from 1.69 percent to 1.80 percent and would have allowed normal retirement under a rule of 88. The bill had an effective date of January 1, 1992, provided the margin of the Public Employees Retirement System nonjudges fund covered the actuarial impact of the proposal. If the margin did not cover the actuarial impact of the proposal on January 1, 1992, the bill would not become effective. The board's actuary had determined that the actuarial cost of the proposal was 1.08 percent of covered compensation and the actuarial margin was .66 percent of covered compensation as of October 31, 1991. As a result, the Public Employees Retirement System Board did not

make a decision that the fund could cover the actuarial impact of this proposal and the bill did not become effective.

### **MANAGEMENT OF THE STATE HEALTH PLAN BY THE PUBLIC EMPLOYEES RETIREMENT SYSTEM**

The committee received information from representatives of the Public Employees Retirement System Board concerning the management of the state health plan. The Retirement Board has implemented various health program initiatives during prior bienniums. These include inpatient preadmission requirements, concurrent review requirements, diagnostic related group pricing, a preferred provider organization program, and redesign of the plan with increased member payments. During the 1991-93 biennium, the Retirement Board implemented an outpatient preadmission program, an expanded preferred provider organization program, a prenatal plus program, a limited wellness program, a data development program, a new prescription drug program, and an auditing program. The Retirement Board also explored the feasibility of implementing an exclusive provider organization program and implemented a new rate structure for political subdivisions. The Retirement Board reported that it has a number of health program initiatives proposed for the 1993-95 biennium. Concerning plan design, a new copayment for ancillary services is planned, a triple option plan-exclusive provider organization system is planned, and wellness programs are planned. The Retirement Board is planning to implement longer term contracts and a flat rate for the uniform group insurance program. The Retirement Board reported that it is considering legislative proposals for fee schedules, various underwriting requirements, direct contracting procedures, a prohibition on provider discounts, and the implementation of a coordinated employee assistance program.

# FINANCE AND TAXATION COMMITTEE

The Finance and Taxation Committee was assigned three studies. House Concurrent Resolution No. 3043 directed a study of the methods and manner in which tax-exempt entities acquire and hold real property, the effect of such acquisition and ownership on local tax bases, and the feasibility and desirability of limiting such acquisition, eliminating or limiting such tax exemptions, or requiring divestiture of such property. The study resolution also called for study of potential funding sources for the wetland tax exemption program. Senate Concurrent Resolution No. 4037 directed a study of the method of providing and determining state aid to local fire departments and districts with particular emphasis on the reliability and consistency of revenues distributed. The chairman of the Legislative Council assigned the committee a study of the property tax exemption for farm buildings. Because of anticipated effects of the farm building exemption as interpreted by the Attorney General, several areas in the state were under substantial and immediate budget pressures and the committee was requested to give priority attention to this issue and report its recommendation to the Legislative Council before the November 1991 special legislative session.

Committee members were Representatives Bruce Laughlin (Chairman), Rocky Bateman, Wesley R. Belter, Odell Flaagan, Tom Freier, Steve Gorman, John Hokana, Alice M. Miller, Alice A. Olson, and Earl Rennerfeldt and Senators Meyer Kinnoin, Aaron Krauter, Evan E. Lips, Steven W. Tomac, and F. Kent Vosper.

The committee submitted the "FARM BUILDINGS PROPERTY TAX EXEMPTION STUDY" portion of this report to the Legislative Council at the special meeting of the Council in October 1991. The Council accepted the report submitted in October 1991 for submission to the 52nd Legislative Assembly meeting in special session in November 1991. The recommended bill (House Bill No. 1615) was passed.

The remainder of the report was submitted to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted that report for submission to the 53rd Legislative Assembly.

## FARM BUILDINGS PROPERTY TAX EXEMPTION STUDY

### Background

North Dakota Century Code (NDCC) Section 57-02-08(15) provides a property tax exemption for farm structures located on agricultural lands if the structures are not used in connection with any business other than farming.

Before 1981 there was no statutory definition for the phrase "agricultural property." In 1981 the Legislative Assembly extensively revised the assessment of property for taxation purposes and classified property into four classifications, including agricultural property. The 1981 legislation that accomplished this revision defined agricultural property as "lands which are used for raising agricultural crops or grazing farm animals but shall not include platted lands." The reference to platted lands created difficulties because

some platted lands were used for genuine agricultural purposes but were platted at the request of local planning officials to assist with future planning needs of the community. During the 1981 reconvened session, the Legislative Assembly amended the definition of agricultural property to provide that lands platted and assessed as agricultural property before March 30, 1981, should continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals.

In 1982 the Attorney General issued an opinion that "a tract of land which was platted and assessed as nonagricultural property prior to March 30, 1981, for the purpose of ad valorem taxation should not be classified as agricultural land for that purpose after March 30, 1981."

In 1983 the Legislative Assembly again amended the definition of agricultural property to add assistance for assessors in determining when agricultural property is put to a use for other than agricultural purposes. After this amendment, the Attorney General issued an opinion in 1983 stating that "land platted and classified as commercial property for ad valorem taxation purposes prior to March 30, 1981, cannot now be reclassified as agricultural property . . . ."

As a result of the 1983 Attorney General's opinion, the Legislative Assembly in 1989 provided that the time limitation (March 30, 1981) contained in the definition of agricultural property "may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies . . . ."

In 1990 the Attorney General was asked for an interpretation of the farm building exemption as applied to grain bins owned by a farmer but located on railroad right-of-way property. The Attorney General said:

Agricultural land is defined by use so that any land that is "used for raising crops" is agricultural land. Crops that are grown and harvested are customarily stored by the farmer until they are marketed. This storage of harvested grain falls within the meaning of the phrase "used for raising crops" in much the same way that a machine shed used for storing the farm machinery would fall within that definition. Because it is a customary practice in raising crops to store the grain grown by the farmer in a farm operation, the land that is used for storing that grain is agricultural.

The use of the structure is the second test for the farm building exemption. The use of this bin is for storage of grain grown on the farm operated by the individual who uses the bin. The farm plant is the entire farm enterprise operated as an economic unit. If a bin is used as part of the economic farm unit, then it is apparent that the bin is a farm structure.

The Attorney General concluded that a grain bin owned by a farmer and located on a railroad lease site is exempt from taxation as a farm building.

The 1990 Attorney General's opinion did not become known to many local tax officials until the current taxable year. The effect of this opinion is of particular concern in the northeastern part of North Dakota, where potato industry impact is significant to local tax bases and where many privately owned potato warehouses are located on railroad right-of-way property. Application of the Attorney General's interpretation of the farm building exemption would remove many of these potato warehouses from tax rolls and this possibility caused substantial concern among local officials.

It is important to note that the letter of the Attorney General refers to the 1989 legislation in making the determination that grain bins on railroad right-of-way property are now exempt from taxation as farm buildings. The significance of this fact is that although local officials learned of the exemptions in 1991, not only would these facilities be exempt for 1991 but owners of such facilities who paid taxes in 1989 and 1990 could be eligible for an abatement or refund of taxes paid for those tax years.

### **Testimony**

At a meeting of the committee in Grafton, local officials expressed concern about lost tax revenues and potential refunds of two years worth of tax collections. The Valley School District would require a 24-mill increase to make up for lost tax revenues and the Grafton School District would require an increase of at least 20 mills to account for lost revenues. Walsh County would lose over \$51,000, cities and townships within the county would lose almost \$38,000, and school districts in the county would lose over \$96,000. Total taxes lost in Pembina County would amount to over \$51,000. The exemption of potato warehouses was described as being a serious problem for local budgets and causing substantial increases in property taxes for all other taxpayers.

Potato growers from the northeastern part of the state pointed out that in recent years railroads have been reluctant to lease right-of-way property for potato warehouse facilities. Potato growers have turned to constructing warehouses on their farms with railroad access provided if the growers paid for installation of railroad spurs to serve the warehouses. In earlier times potato warehouses were constructed on railroad right-of-way property under long-term leases. Many of these warehouses are still in service and were taxable prior to the Attorney General's letter opinion. Potato warehouses on private property and served by a privately owned railroad spur were not subject to taxation prior to the Attorney General's opinion and have not been affected by the opinion.

Some farmers support the exemption of farm buildings even though located on railroad property, some support taxation of such property, and some support taxation of potato warehouses on private property served by a privately owned railroad spur. Several potato growers expressed concern about assessment levels on potato warehouses, but supported taxation of potato warehouses located on railroad right-of-way property.

### **Committee Deliberations**

Representatives of the Tax Commissioner suggested the farm building tax exemption be amended

to provide that farm buildings located on platted lands within city limits or on railroad operating property are not exempt from taxation. The committee was informed that this amendment would return tax status of farm buildings to nearly the same approach that developed through case law prior to 1981. Use of railroad operating property as a determining factor was suggested so that such a building on abandoned railroad right of way or on a railroad spur on privately owned farm land could be exempt as a farm building. An exemption of a building on privately owned land served by a railroad spur was considered appropriate because owners of warehouses on private land must pay for their own track.

The committee considered a bill draft containing these provisions. Copies of the bill draft were sent to the director of tax equalization for each county in the state with a request for their comments on the bill draft and inviting them to appear before the committee to discuss particular concerns. Comments were received from seven tax directors, all of whom indicated general support for the bill draft.

Because the potential of abatement of 1989 and 1990 taxes exists, the committee determined that the opportunity for abatement should be terminated so that local governments would not be faced with substantial refunds. The committee considered the possibility of foregoing collection of taxes on farmers whose buildings would become taxable for 1989 and 1990 and who did not pay taxes for those years under the exemption eliminated by the bill draft. The committee determined that it would be unfair and probably legally indefensible to prohibit abatements for those who paid taxes in 1989 and 1990 while not requiring payment of taxes for those in identical circumstances who did not pay taxes.

### **Recommendation**

The committee recommends 1991 House Bill No. 1615 to provide that the property tax exemption for farm buildings does not apply to any building located on platted land within city limits or located on railroad operating property. The bill is retroactive to the 1989 taxable year to eliminate any opportunity for tax abatements for 1989 and 1990 taxes paid on such property. Any such property for which the owner did not pay taxes would become taxable, and the bill provides that taxes for those years will be considered payable with 1991 taxes for purposes of the discount for early payment of taxes and no penalties for late payment will apply unless for late payment under the 1992 payment dates.

### **PROPERTY TAX EXEMPTION STUDY Tax-Exempt Property Acquisition**

Property is acquired by tax-exempt entities by purchase, exchange, gift, trust, inheritance, foreclosure, tax sale, reversion, sale and leaseback arrangements, and other methods. In addition, governmental entities may acquire property by escheat, failure of the owner to pay taxes, or eminent domain.

Property is held by tax-exempt entities for a variety of reasons. A significant consideration for nonexempt landowners is that nonresidential property must be economically productive to allow for

payment of taxes. Economic productivity is not a concern of tax-exempt entities because payment of property taxes is not a concern and, as a result, land acquired by tax-exempt entities is likely to remain off the tax rolls. A tax-exempt entity is likely to retain ownership of property unless a greater benefit or use becomes available or divestiture is required.

### **Property Tax Exemptions**

Exemptions from property taxes have existed since North Dakota was part of the Dakota Territory. The large number of property tax exemptions cover a broad range of property owners and property uses. The following is a summary of property tax exemptions allowed by law:

1. Governmental property. Under the supremacy clause of the United States Constitution, states and political subdivisions have no power to tax the federal government. In limited instances, Congress has waived immunity from taxation or provided for payments in lieu of taxes. These principles are also contained in Article X, Section 5, of the Constitution of North Dakota which provides that property of the United States, to the extent immunity from taxation has not been waived by an act of Congress, is exempt from taxation.

Property belonging to Indian tribes and held in trust by the United States Secretary of the Interior is exempt from taxation under federal and state law.

Property owned by the state is exempt from property taxes except when the land is being sold under contract for deed. In specific instances, state-owned land is subject to payments in lieu of taxes to political subdivisions. Payments in lieu of taxes are required by statute for property owned by the State Game and Fish Department, Board of University and School Lands, or the State Treasurer as trustee for the state.

Property owned by political subdivisions is exempt from taxation.

2. Cemeteries.
3. Property used for religious or religious education purposes. Property belonging to nonprofit institutions of learning owned and managed by a religious organization is exempt from taxation. Houses used exclusively for public worship, the property upon which such buildings are located, and any dwellings belonging to a religious organization and ordinarily used for the residence of the minister in charge of the services of the church are also exempt.
4. Buildings belonging to institutions of public charity, including hospitals and nursing homes, used wholly or in part for public charity.
5. Property of an agricultural fair association.
6. Property owned by lodges, chapters, commanderies, consisteries, farmers' clubs, commercial clubs, and similar organizations not

organized for profit and used for a place of meeting and conducting business and ceremonies. All property owned by a fraternity, sorority, or organization of college students is exempt from taxation. Any portion of such premises used for sale of alcoholic beverages or for sale of food at a profit is subject to taxation.

7. Military parks or monuments.
8. Farm buildings if they are part of a qualifying farm and the farmer meets the income requirements provided by law.
9. Nonprofit educational and athletic organization property at any state educational institution.
10. Homestead property of certain disabled individuals is subject to partial exemption.
  - a. A paraplegic disabled veteran, or that veteran's surviving spouse, is eligible for a reduction of up to \$10,000 of valuation of the homestead for assessment purposes.
  - b. A disabled veteran, or that veteran's surviving spouse, is eligible for a reduction of up to \$5,000 of taxable valuation of the homestead if the claimant's income does not exceed the limitations that apply to the homestead credit.
  - c. Any permanently and totally disabled person who is permanently confined to use of a wheelchair, or that person's surviving spouse, is entitled to a reduction of up to \$5,000 of taxable valuation of the homestead.
  - d. A blind person is entitled to a reduction of up to \$5,000 of taxable valuation of homestead property owned and occupied as a home by the blind person.
11. Structural improvements used exclusively for the business of operating an automobile parking lot within a city.
12. Solar, wind, or geothermal energy devices for a five-year period after installation.
13. Property of a cooperative or nonprofit corporation used to furnish potable water to members and customers.
14. Group homes owned by nonprofit corporations, including homes for persons with developmental disabilities.
15. Certain property owned by political subdivisions and leased to various entities, including institutions of public charity, religious organizations, or organizations promoting public athletic or recreational activities.
16. Any building located on land owned by the state if the building is used at least in part for academic or research purposes by students and faculty of a state institution of higher education.
17. Up to \$75,000 of the true and full value of newly constructed single family residential or condominium and townhouse residential property for two years if approved by the governing body of the political subdivision.
18. Property used primarily to provide early childhood services by a licensed care provider may be exempted by the governing body of a political

- subdivision.
19. The homestead tax credit provides a tax reduction for qualified individuals. Any person 65 years of age or older or who is permanently and totally disabled is eligible for a reduction in taxable valuation of the homestead property, subject to income limitations and other conditions.
  20. Wetlands, if the state has provided funding to make payments of property taxes otherwise due to the county.
  21. Property of a housing authority, but a housing authority may agree to make payments to the political subdivision or state for improvements, services, and facilities furnished for the benefit of the housing project.
  22. Property of a county nursing home authority, but the authority may agree to make payments to the political subdivision or state for improvements, services, and facilities furnished for the benefit of the nursing home project.
  23. Land acquired by the Adjutant General as a National Guard training area, but payments in lieu of real estate taxes must be made to counties in which the property is located in the same manner as provided for payments in lieu of taxes by the State Game and Fish Department, with the exception that no county may receive less in payments for any parcel of land than the county received for the last year in which the property was taxable.
  24. Urban renewal projects under tax increment financing. Under this approach, the incremental value by which property valuations are increased by an urban renewal project is not taxable until repayment of all bonds or obligations issued by the political subdivision to pay the cost of the project.
  25. New industries for a period not exceeding 10 years under North Dakota Century Code (NDCC) Chapter 40-57.1. These exemptions may be granted by the city or county, after negotiation with the operator of the new business.
  26. State-owned property leased to a person who uses the property primarily for tourism or concession purposes, upon payment of a license fee in lieu of taxes under NDCC Section 57-02-08.7.
  27. Improvements to commercial and residential buildings, for a period of three years if approved by the governing body of the political subdivision as provided in NDCC Section 57-02.2-03.
  28. A pipeline used for transportation of carbon dioxide to an oil field for use in enhanced recovery of oil or natural gas, for a period of 10 years but payments in lieu of taxes must be made by the State Treasurer to each county in which the pipeline is located.
  29. Rural electric cooperatives and cooperative electrical generating plants are subject to special rules for payments in lieu of personal and real

property taxes.

30. Telephone companies that pay taxes in lieu of all state and local real and personal property taxes.
31. Banks and trust companies and savings and loan associations that pay taxes in lieu of property taxes on those institutions.
32. Credit unions, except they are taxable to the same extent as other similar property is taxed.
33. Payment of oil and gas gross production taxes is in lieu of all other taxes on any property rights inherent in the right to produce oil or gas.
34. Payment of mobile home taxes is in lieu of property taxes upon a mobile home.
35. Payment of the forest stewardship tax is in lieu of payment of ordinary property taxes on forest property.
36. A coal conversion facility is classified as personal property and is exempt from property taxes. Payment of the privilege tax on coal conversion facilities is in lieu of property taxes under NDCC Section 57-60-06.

North Dakota Century Code Section 57-02-14 requires the assessor to enter a valuation for all property that is exempt from taxation and to designate the ownership and use of the property. This provision is not fully observed in practice.

#### **Effect of Tax-Exempt Property on Local Tax Bases**

The effect on the tax base of the existence of tax-exempt property varies considerably, depending on a number of factors. Original grant lands or other property that has always been under government ownership and has never been on the tax rolls does not appear to be of primary concern. It appears that of greater concern to local officials is property removed from the tax rolls in recent years, causing a shift of the tax burden to remaining taxable property in the taxing district.

#### **Federal Land Ownership**

A particular concern expressed in the study resolution is with the holdings and recent acquisitions of the federal government. The federal government began land acquisition for wetlands and waterfowl preservation more than 60 years ago. The 1929 Migratory Bird Conservation Act initiated a program for the acquisition of land for migratory bird refuges. Subsequent federal legislation provided revenue for the acquisition program. 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. In 1961 Congress authorized a \$105 million interest-free loan to the migratory bird conservation fund for a crash program for acquisition of waterfowl production areas and migratory bird refuges. Since 1961 the federal government has pursued an aggressive policy of acquiring land in fee and under easement for migratory bird refuges and waterfowl production areas. Section 3 of the Wetlands Act of 1961 provides that no land suitable for waterfowl habitat may be acquired by the United States Fish and Wildlife Service with money

from the fund established for federal wetlands acquisition unless the acquisition has been approved by the Governor or an appropriate agency of the state in which the land is located. Acquisition of property by the federal government within North Dakota under this law has been the subject of controversy for several years. Between 1961 and 1977, North Dakota Governors authorized acquisition of 1.5 million acres of wetlands in North Dakota for waterfowl production areas.

A variety of differences developed between state and federal officials regarding acquisition of wetlands in North Dakota, leading to passage of 1977 Senate Bill No. 2016 (NDCC Section 20.1-02-18 et seq.) which, among other things, "withdrew" gubernatorial consent to federal wetlands acquisitions and established procedures for public participation in the consent process regarding federal wetlands acquisitions. Passage of this legislation caused the United States Fish and Wildlife Service to suspend acquisition of waterfowl production areas in North Dakota. However, the federal government filed a complaint in 1979 in federal district court in North Dakota seeking relief from the 1977 law on the basis that the law was unconstitutional. This case ultimately was decided by the Supreme Court of the United States on March 7, 1983 (*North Dakota v. United States*, 460 U.S. 300, 75 L. Ed. 2d 77, 103 S. Ct. 1095). In its decision, the Court held that although the consent of the Governor for the acquisition of property was required by the Wetlands Act of 1961, once the consent had been given, it could not be revoked. The Court further found that state legislation could not restrict the ability of the federal government to acquire easements pursuant to consent previously given by the Governor. The Court did not hold that the North Dakota statutes are unconstitutional, but rather that those statutes could not affect acquisitions of wetlands under the previous consents given. Thus, these statutory provisions are still in effect and presumably apply after acquisition of 1.5 million acres of wetland acres previously approved by gubernatorial consents.

In 1977 the United States Fish and Wildlife Service had acquired approximately one-half of the 1.5 million acres of wetlands in North Dakota approved by gubernatorial consent. Total acreage acquired by the service as of the end of 1991 is slightly in excess of one million acres, of which 448,433 acres are held in fee and 785,241 acres are held under easement. Some of this property was owned or held under easement by the service before 1961 so not all of it is counted toward the 1.5 million acres that has been authorized for acquisition. By its estimate, the service believes it has remaining authority to acquire interests in approximately 461,000 additional wetland acres as of June 1992.

It appears that United States Fish and Wildlife Service land acquisition priorities have shifted to other states in recent years. During calendar years 1990-91, acquisitions in North Dakota totaled 7,174.87 acres, which is a lower total than for comparable time periods in earlier years. It was reported that funds for land acquisitions have been allocated differently in recent years and a lesser percentage of these funds have been earmarked for acquisition of North Dakota property.

Land owned by the federal government is exempt from property taxes. Land leased by the federal government is still taxable to the owner of the land. However, lands for which a permanent easement has been granted to the United States for water and wildlife conservation projects are exempt from taxation, if the lands are inundated.

The federal government provides payments in lieu of taxes to political subdivisions for tax-exempt property in various manners. For federal "entitlement lands" such as National Park Service and Forest Service lands, Bureau of Land Management lands, and certain Corps of Engineers lands, payments to political subdivisions are governed by the Payment in Lieu of Taxes Act, which was passed by Congress in 1976. For property placed in the National Wildlife Refuge System, distributions to political subdivisions are governed by the Refuge Revenue Sharing Act, which was originally passed by Congress in 1935 and was substantially amended in 1964 and in 1978.

An early problem encountered by federal wildlife area acquisition was the financial impact on affected political subdivisions. In 1964 Congress enacted amendments to the Refuge Revenue Sharing Act to provide for the Secretary of the Interior to make annual payments to each county in which federally acquired lands are located. The payments were set at the greater of 25 percent of the net receipts from refuges in the county or three-fourths of one percent of the current adjusted cost of the acquired lands. In 1976 Congress again revised the Act to correct a number of perceived inequities. During the 1970s, funds available from revenue-generating activities on refuges decreased and funds available for payment were insufficient to meet county entitlements. The method of valuation of land based on original cost caused discrepancies in land values to become exaggerated. The 1978 Act provided for a minimum payment to counties of 75 cents per acre, required separate appropriations to make up revenue deficiencies to ensure full reimbursement under the formula, and provided that payments would be based on fair market value of the property, which must be appraised every five years. The 1978 Act also required the Secretary of the Interior to adopt guidelines for allocation of revenues to political subdivisions within a county, rather than providing for the county to retain the entire payment.

Another concern with regard to federal payments in lieu of taxes is that Congress has not appropriated adequate funding for the payments. According to the report of the Legislative Council's 1989-90 interim Political Subdivisions Committee, Congress has appropriated as little as approximately 60 percent of the funds necessary for payments in lieu of taxes on federal property. That report indicated that several groups were working with the North Dakota Congressional Delegation to persuade Congress to appropriate 100 percent funding for payments in lieu of taxes on federal property.

### **Other Exemptions**

Some property tax exemptions are intended to enhance the tax base of the political subdivision in the future. The concept is that providing an incentive for construction will promote improvements to property



which will eventually be reflected on the tax rolls with increased valuations. Tax exemptions for new residential property, expansion of commercial or industrial property, and tax increment financing are examples of this type of exemption. Such exemptions generally last for a limited period of time and only provide exemption for the incremental increase in valuation attributable to the improvements. Therefore, the current tax base of the political subdivisions is not reduced by the exemption and, if the theory is correct that this exemption encourages improvements, the tax base of the political subdivisions is ultimately enhanced.

Another type of exemption is provided for coal conversion facilities. Coal conversion taxes are in lieu of property taxes on the facilities. Coal conversion tax revenues are shared with political subdivisions but residents of counties in which such facilities are located have been critical of this method of taxation in the past, arguing that industrial facilities in other areas of the state are on local tax rolls and provide greater revenue to local political subdivisions.

Other types of exemptions such as those for hospitals, nursing homes, and fraternal organizations may result in a considerable loss of value of property from local tax rolls. However, these facilities are generally located in cities in which the tax base is substantially more stable than in areas in which only agricultural land may exist. In addition, the existence of these facilities provides employment for the community, which means additional residential property will be available for taxation.

### **Wetlands Tax Exemption Funding**

A property tax exemption for wetlands was created in 1985. As enacted, this exemption was scheduled to become effective for the 1987 taxable year. The wetlands property tax exemption has never become effective because in 1987 the exemption was amended to require reimbursement from the state to political subdivisions for lost tax revenues before any exemption becomes effective. No funding source or legislative appropriation has been provided and, as a result, no wetlands tax exemption has been granted.

The State Treasurer is authorized to receive funds for the wetlands tax exemption program from any source. The director of the Game and Fish Department, Commissioner of Agriculture, and State Engineer are to work with the Governor, the United States Fish and Wildlife Service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement the wetlands tax exemption program. No agency or officer is given primary responsibility to head this funding effort and no coordinated action has been taken in pursuit of the necessary funding.

At the request of the committee, the director of the Game and Fish Department organized a committee of interested organizations and state agencies to study potential funding sources for the wetlands tax credit provided by state law. That committee estimated that approximately \$2 million per biennium is necessary to implement the wetlands tax credit. The Game and Fish Department subsequently obtained a substantial grant from the Environmental Protection Agency to study all aspects of wetlands preservation. This

study will include a recommendation on whether the wetlands tax credit is necessary. It was estimated that substantial progress should be made under the grant study before the 1993 legislative session but the final report will probably not be completed until several months after the 1993 legislative session. The director of the Game and Fish Department recommended that this study should be completed before new funds are dedicated to the wetlands tax credit under state law.

### **Property Tax Exemption Administration**

The committee received testimony from county directors of tax equalization regarding administration of property tax exemptions. A person claiming a property tax exemption is not required to file a written claim for the exemption, but the county may require written claims for property tax exemptions. Use of written claims was recommended to make administration of property tax exemptions easier and provide increased certainty that those entitled will receive exemptions.

State law requires assessors annually to assess exempt property. Assessment officials admitted that most assessors do not comply with this provision because limited time and staff make it difficult to do a proper assessment of each parcel of property in the jurisdiction and the decision is made to forego assessments on exempt property and concentrate available resources on assessment of property from which tax revenue will be derived.

Local tax officials said the greatest valuation of tax-exempt property within cities consists of charitable, religious, or government property. The exemption for buildings owned by institutions of public charity was examined in detail, including review of opinions of the Attorney General regarding application of the exemption. The exemption for charitable property is only available when the property is both owned and used for charitable purposes, e.g., farmland owned by a charitable organization would not be exempt from taxation because it is not used for charitable purposes.

The committee conducted a survey of county directors of tax equalization for each county. Forty-two of 53 county directors of tax equalization responded to the survey, but only 14 were able to provide valuation information for tax-exempt property in their counties. Of the 42 respondents, 37 said their counties do not make annual assessments of tax-exempt property, four said partial assessments are made, and only one said annual assessments of tax-exempt property are made in the county. Based on valuation comparisons and excluding consideration of government property, 29 respondents said the farm building exemption accounts for the greatest amount of tax-exempt property in their counties, two respondents said religious or charitable exemptions account for the most tax-exempt property in their counties, and one respondent said electrical generating facilities account for most tax-exempt property in the county. Of the 14 respondents who provided information on valuation of tax-exempt property, comparison of valuation of taxable property and tax-exempt property indicated that for those 14 counties, 26.9 percent of the value of all property within city limits is exempt from

taxes, 38.5 percent of the value of all property outside city limits is exempt, and 31.9 percent of all property is exempt from taxes. On the basis of this comparison it would appear that approximately one-third of the valuation of all property in the state is exempt from property taxes.

Opinions of local taxing officials on which issues cause the most difficulty in the assessment process pointed out some areas for committee consideration. One expressed concern was that it is difficult to determine whether there is any charitable purpose to some exempt structures, such as hospitals. It was suggested that because cities provide services such as fire and police protection, ambulance subsidies, street lights, and other services, closer scrutiny should be applied to whether a facility is actually used for charitable purposes. Another concern was that state law on property tax exemptions is sometimes phrased in very loose terms which leaves it to local officials to apply the law to decide which property should be exempt. It was suggested that laws providing property tax exemptions be very carefully phrased and rigidly applied so local tax officials will decide valuations and not whether property is exempt. Committee members took exception to this suggestion, saying that maintaining flexibility in property tax exemption laws gives local officials some discretion and that local discretion is desirable so that taxpayers who have a problem can present it to local officials rather than being forced to seek relief at the state level.

The committee discovered that no information was available on the total amount and valuation of property owned by the state. The committee conducted a survey of state agencies and institutions which determined that the state owns 1,047,655 acres of land with a total value of \$916,741,601, of which \$634,214,871 is valuation of property within city limits. Many of the estimates of valuation reported by state agencies were very conservative estimates of value because much of the property was purchased or received long ago and is recorded at either cost or fair market value at the time it was received.

The committee spent a substantial amount of time discussing the exemption for land owned by the federal government. Representatives of the North Dakota Stockmen's Association and Landowners Association of North Dakota expressed frustration of their members with land acquisition and ownership policies of the federal government. They cited several concerns with federal land ownership, the greatest of which are that property is taken out of agricultural production and the federal government does not bear its fair share of the property tax burden.

A report from the United States Bureau of Land Management shows a total of 1,964,785.6 acres of land under federal ownership in North Dakota. However, contact with individual agencies from which information is available determined that there is an additional 851,000 acres owned by the Bureau of Indian Affairs, 1,500 acres owned by the United States Park Service, and 21,000 acres owned by the United States Fish and Wildlife Service that do not appear on this report. These additional acres would bring the actual total of property owned by the federal government in North Dakota to approximately 2,838,000 acres. Federal lands are owned by numer-

ous federal agencies, each of which is under different federal legal authority as to whether it provides any payments in lieu of taxes to local governments. The agency for which the greatest concern was expressed with property acquisition and ownership is the United States Fish and Wildlife Service.

Information compiled for Steele County indicates that property owned by the federal government in Steele County provides \$1.73 per acre in payments in lieu of taxes to the county versus an average of \$5.11 per acre for taxes on land in private ownership, \$4.23 per acre in payments in lieu of taxes by the State Game and Fish Department, and \$4.77 per acre in payments in lieu of taxes by the Bank of North Dakota. Some variation in payments is explained by valuation differences because wildlife preservation areas consist of marshes and other property not equal in value to tillable land, but a substantial amount of property owned by the United States Fish and Wildlife Service is tillable land.

Representatives of the United States Fish and Wildlife Service provided responses to several questions posed by the committee. It was stated that the method most commonly used to determine payments in lieu of taxes for United States Fish and Wildlife Service property is using three-fourths of one percent of the appraised value of United States Fish and Wildlife Service property in the county and that amount is the payment to the county. The United States Fish and Wildlife Service reappraises its property every five years. Payments in lieu of taxes for all United States Fish and Wildlife Service property in the state averaged \$1.25 per acre for 1991.

Two separate funding sources are available to the United States Fish and Wildlife Service, only one of which is available for payments in lieu of taxes. The refuge revenue sharing fund is used to make payments in lieu of taxes to political subdivisions and generally consists of lease income on United States Fish and Wildlife Service lands and offshore oil leases. The revenues from sale of duck stamps is maintained in a separate fund and this fund is to be used only for acquisition of property. Federal law allows Congress to appropriate supplemental funds to make up deficiencies in the revenue-sharing funds if payments to political subdivisions are less than 100 percent of entitlement. From 1965-75 payments to political subdivisions were equal to 100 percent of entitlement. Payments were less than entitlement from 1976-79, returned to 100 percent in 1980, but declined again in 1981 primarily due to reduced offshore oil lease revenues causing a decline in the balance in the refuge revenue sharing fund. Payments slipped to a low of 59 percent of entitlement in 1987. Payments have increased since 1987 and equaled 93 percent of entitlement in 1990 and 89.5 percent of entitlement in 1991. The Department of the Interior and the United States Fish and Wildlife Service have included within their budgets submitted to Congress requests for additional funding for the last four or five years for payment of entitlements to counties, but the Office of Management and Budget has cut those budget requests. A United States Fish and Wildlife Service representative said several members of Congress, including members of North Dakota's Congressional Delegation, have been instrumental in

increasing the funding available for payments to counties which has made it possible to increase the percentage of entitlement paid to counties in the years since 1987.

A recent change in acquisition policy by the United States Fish and Wildlife Service was pointed out as an improvement in reducing the impact to local tax bases from United States Fish and Wildlife Service property acquisition. The new policy is called the refuge revenue sharing tax trust and is an idea first suggested by the Governor of North Dakota. Under this policy, a lump sum payment is provided to the county in which property is acquired and this amount is intended to be used by the county to generate future interest earnings to offset the difference between actual taxes and the entitlement payments from the United States Fish and Wildlife Service.

A criticism made by landowner group representatives and committee members is that it is difficult to understand how the United States Fish and Wildlife Service lacks funds to make entitlement payments to political subdivisions while at the same time it has money available to acquire property. Committee members said this practice generates ill will at the local level and suggested that the United States Fish and Wildlife Service should work with conservation groups to impress upon Congress the need to make full entitlement payments because the federal government is becoming an unwelcome neighbor for North Dakota landowners.

### **Bill Drafts Considered**

The committee considered a bill draft that would have required that 80 percent of agricultural property acquired by the federal government for migratory bird sanctuary or wildlife habitat purposes must remain in agricultural production. The purpose of the requirement was to stop the removal of agricultural property from agricultural production. Property that was used for agricultural production before its acquisition by the federal government would have to continue to be used for agricultural production after being acquired by the federal government. Legal research indicated that the supremacy clause of the United States Constitution prohibits the state from interfering with subjects on which federal legislation exists. Research also reveals that federal law gives exclusive jurisdiction over the use of United States Fish and Wildlife Service lands to the Secretary of the Interior and, therefore, it is likely that legislation dictating usage of property acquired by the United States Fish and Wildlife Service is unconstitutional as a violation of the supremacy clause.

The committee considered a bill draft that prohibited any entity from acquiring agricultural property for wildlife habitat or conservation purposes unless that entity has made all payments of taxes or payments in lieu of taxes on property owned by that entity for all prior years, with interest at a rate equal to the rate payable to redeem a subsequent tax sales certificate. The bill draft required any entity owning property used for wildlife habitat or conservation purposes to have made payments of taxes or payments in lieu of taxes equal to 100 percent of the taxes that were or would have been due against that property under local assessment and levies for the previous two

taxable years. The bill draft also required any entity owning property used for wildlife habitat or conservation purposes to provide the Governor an annual accounting of acreage and valuation of interests held by that entity in each county in the state and to provide the Governor an annual report of how much property the entity intends to acquire in each county. The bill draft required the board of county commissioners of each county to establish limitations on the acreage of property used for wildlife habitat or conservation purposes in the county with the advice of representatives of water, farm, and wildlife groups and representatives of all levels of local government in the county. No property could be acquired in the county for wildlife habitat or conservation purposes when the limitation established for the county had been equaled or exceeded. Noncompliance with the bill draft resulted in the entity being denied the right to file instruments with the register of deeds of the county.

The committee recognized the possibility that the bill draft would be found by a court to be unconstitutional. However, the committee determined the bill draft should be considered by the Legislative Assembly to draw the attention of federal authorities to the problems created by ownership of property by the federal government. Past efforts to gain relief from these problems, including several resolutions to Congress, have been unsuccessful. North Dakota's Congressional Delegation has sought relief for these problems but their efforts have met with little success, other than bringing entitlement payments somewhat closer to the amount required by federal law.

The committee considered a resolution draft that urges the federal government to assume its fair share of the property tax burden for the property under its ownership. The resolution urges Congress to repeal laws authorizing acquisition by federal agencies of land for migratory bird refuges and waterfowl production areas or to provide that states have an option to rescind previously granted approval for acquisition of such property. The resolution further urges Congress to provide that no federal agency or instrumentality could acquire any interest in property in a state unless all federal agencies had made full in lieu of tax payments for the previous two years in that state in an amount equal to 100 percent of taxes that would be due under local assessment and levies. The resolution also urges Congress to require each federal agency or instrumentality to give each state an annual accounting of acreage and valuation of its holdings and how much property it intends to acquire in each county in the state. The committee could find no reliable information on these questions. The resolution draft also requested Congress to provide that federal duck stamp revenues and other funds used for acquisition of property be made available for payments in lieu of taxes on property already acquired.

### **Migratory Bird Conservation Commission**

The committee was informed that the Governor would address the Migratory Bird Conservation Commission. The committee considered a draft of a letter for delivery to the Governor and presentation by him to the Migratory Bird Conservation Commission. Upon approval by the chairman of the Legislative Council,

the committee delivered a letter to the Governor for this purpose. The letter states the opinion of the committee that the federal government is failing in its responsibility as a landowner on several counts including providing a breeding ground for noxious weeds and insects, failing to mow ditches which must be mowed at township or county expense, dictating how neighboring land may be used, failing to bear its fair share of the tax burden and thus shifting additional taxes onto neighboring landowners, and using money saved by not paying taxes to acquire additional property. The letter recognized that preservation of wetlands serves an important public purpose but stated that public purposes should be funded at public expense and not at the expense of neighboring landowners. The letter urged the Migratory Bird Conservation Commission to take action at the federal level to address these concerns.

### **Recommendations**

The committee makes no recommendation regarding funding of the wetlands tax credit. No recommendation is made because of the study in progress under a federal grant obtained by the Game and Fish Department. That study may determine that the wetlands tax credit is not a necessary component of wetlands preservation.

The committee recommends Senate Bill No. 2037 to prohibit acquisition of agricultural property interests in North Dakota for wildlife habitat or conservation purposes unless certain conditions are met. The bill is an attempt to gain the attention of a Congress that has not provided funding for payments in lieu of taxes as required by law and has not been responsive to resolutions describing the issue.

The committee recommends Senate Concurrent Resolution No. 4006 to urge the Congress of the United States to take responsibility to assure that the federal government becomes a responsible landowner by assuming its fair share of the property tax burden on land under federal ownership.

## **STATE AID TO LOCAL FIRE DEPARTMENTS STUDY**

### **Background**

Since 1887 North Dakota has provided for distribution of insurance premium tax revenues from taxes on property and casualty lines of insurance to fire protection districts, including cities, city fire departments, rural fire departments, and rural fire protection districts. It is anticipated that during the 1991-93 biennium, approximately \$6.2 million from premium taxes on property and casualty lines of insurance will be collected. Of that amount, \$5.72 million will be allocated to fire protection districts and the remainder will go to the state general fund. From 1887 until 1985 the revenue from taxes on property and casualty insurance was devoted entirely to distribution to fire protection districts. However, changes in the source of funding were made during the 1980s and a cap was imposed on the amount allocated to fire protection districts in 1989.

North Dakota Century Code Section 18-04-05 provides for allocation of insurance premium taxes to cities, townships, certified rural fire departments, or

fire protection districts. A city receives a sum equal to 2.25 percent of the premiums received by insurance companies issuing policies for property and casualty lines of insurance on property in the city, plus a bonus payment of \$100 if the fire department performs services outside city limits. Each rural fire department not certified by the State Fire Marshal is to receive a bonus payment of \$200. Each rural fire protection district that is certified by the State Fire Marshal is to receive a bonus payment of \$200 plus a sum equal to 2.25 percent of premiums on property and casualty lines of insurance on property in the service area of the district or department.

The amounts determined by the Commissioner of Insurance as being due to each political subdivision are to be certified for payment each year on or before September 1. If the amount appropriated by the Legislative Assembly for distribution is less than the amount determined by applying the formula, proration must be made by the commissioner to provide each eligible recipient with the same proportion of available funds as the proportion it would have received if total funds determined by the formula had been available.

### **Recent Legislation on Insurance Tax Rates and Distribution**

In *Metropolitan Life Insurance Company v. Commissioner of Department of Insurance*, 373 N.W.2d 399 (1985), the North Dakota Supreme Court held that North Dakota's pre-1983 version of the 2.5 percent gross insurance premium tax, from which domestic insurance companies were exempt, violated the equal protection clauses of the state and federal constitutions.

Recognizing the likelihood that the insurance premium tax would be found to be unconstitutional, the 1983 Legislative Assembly changed the manner of taxing insurance premiums. Every insurance company doing business in North Dakota was subjected to taxes at a rate of two percent of gross premiums for life insurance, .5 percent for accident and sickness insurance, and one percent for all other lines of insurance. The 1983 legislation also added language to limit biennial distribution amounts to amounts actually appropriated and provided for proration of payments.

In 1985 the language providing a standing appropriation from the general fund was removed. Crop hail insurance premiums, removed from the formula used to determine distributions to rural fire protection districts in 1983, were returned to the formula. Annual rather than quarterly payment of premium taxes was provided, and quarterly estimated premium tax filings were required.

In 1987 service fees collected by a third-party administrator for a self-insured health care group was added to the list of premiums and other assessments upon which the gross premium tax applies. The premium tax rate for accident and health insurance was increased from .5 percent to 1.25 percent and the tax for other lines of insurance was increased from one percent to 1.25 percent.

In 1989 the certification time for payments to fire protection districts was changed from June 1 to September 1 of each year. The insurance tax distribution fund was created as a special fund to receive insur-

ance premium taxes until \$2,600,000 was deposited in any fiscal year, at which time any excess amounts would be deposited in the state general fund. The insurance premium tax rate for accident, health, and other lines of insurance was increased from 1.25 percent of gross premiums to 1.75 percent of gross premiums.

In 1991 an annual \$200 filing fee for insurance companies was imposed. The fee is reduced by the net tax liability of the company for insurance premium taxes.

Appropriations made from 1981 through 1991 for insurance premium tax distributions and the funds from which those appropriations were drawn are shown in Table A at the end of this report.

### **1987-88 Interim Study**

The Legislative Council's 1987-88 interim Political Subdivisions Committee studied insurance premium tax distributions to fire districts. At that time representatives of the State Firemen's Association surveyed officials of local fire protection districts. That survey indicated satisfaction with existing insurance premium tax distribution levels except when appropriated amounts fell short of the amount that would have been provided through full funding under the distribution formula. State Firemen's Association representatives said they would be satisfied with appropriations for the 1989-91 biennium at the levels provided by 1987 and 1985 appropriations. The interim committee considered the possibilities of increasing insurance premium tax rates to provide additional revenue to fund insurance premium tax distributions but at that time it was estimated that to fund a \$5.2 million fire protection district distribution through increased insurance premium tax rates would require a rate of 2.5 percent on property and casualty insurance which would have been double the existing rate for domestic insurance companies. The committee recommended that insurance premium tax receipts should be the source of distributions to fire protection districts and that future appropriations should be at least \$5.2 million per biennium.

### **Testimony**

The committee was informed by representatives of the Commissioner of Insurance that insurance companies do not accurately report the fire district in which insurance premiums are collected. Because the fire district from which premiums originate is the basis for distribution of premiums, poor reporting practices affect the premium tax distribution received by the fire district. Practices vary among insurance companies, but the majority apparently do not require insurance agents to report the fire district in which insured property is located on insurance applications and as a result much of the information reported by insurance companies to the Commissioner of Insurance is inaccurate and cannot be verified. Inaccurate reporting can cause significant fluctuations in payments received by a fire district from year to year which makes it difficult for fire districts to anticipate revenues and to properly budget necessary funds from other sources.

Representatives of the State Firemen's Association opposed the deposit of tax revenues from prop-

erty and casualty lines of insurance in the state general fund. It was pointed out that the traditional link between property and casualty insurance and fire protection is that a portion of insurance taxes paid by property owners should be used to protect their property.

The committee reviewed the history of the insurance premium tax on property and casualty insurance and the distribution of these revenues. The committee considered the amount of premiums paid on each line of insurance in the state in recent years, payments made to each fire district in the state for the last four years, and gross premiums and the percentage of premium tax refunded to fire districts for several years. It is estimated that if the cap on the insurance premium tax distribution fund is removed, and all premium tax revenue from property and casualty lines of insurance is refunded to fire districts, approximately \$1 million that goes to the state general fund would go to distributions to fire protection districts. The reason that the general fund has benefited from the cap on deposits in the state aid distribution fund is the substantial increase in premium tax revenues from property and casualty lines of insurance, which is attributable to a 40 percent increase in gross premiums paid for those lines of insurance from 1987-88 to 1991-92.

The committee reviewed information on methods used by other states to allocate insurance premium tax revenues to fire protection districts. Other states using a method similar to North Dakota's experience problems with reporting of fire districts in which premiums are collected. It was suggested that a nationwide standard insurance application form showing the fire district in which property is located would be useful in solving reporting problems.

The committee received information that the Hillsboro Fire Department did not receive proper credit for all premium taxes paid for protection of property within the district, especially with regard to the American Crystal Sugar plant. It appeared the insurance premium payments for the sugar plant may have been reported or credited to Minnesota. The committee was informed that it is difficult to check the accuracy in reporting because there is no information other than the total distribution among fire districts reported by insurance companies and there is no further documentation that can be checked to determine whether the amounts reported are correct.

The committee considered two bill drafts that required reporting of the fire district in which premiums are collected, removed the cap on deposits in the insurance premiums tax distribution fund, and required the preparation of maps showing fire protection districts of the state for use by insurance agents in reporting the fire district in which premiums are collected. The committee initially considered requiring the State Firemen's Association to prepare these maps but during discussion of the issue decided that a state agency such as the State Fire Marshal would be a more appropriate place for this responsibility, which would require an appropriation of funds.

### **Recommendations**

The committee recommends House Bill No. 1036 to remove the cap on property and casualty insurance

premium tax revenues deposited in the insurance tax distribution fund. The bill requires the Commissioner of Insurance to segregate tax revenues from these lines of insurance and provides that revenue from premium taxes on other lines of insurance would continue to be deposited in the state general fund. The bill eliminates the \$100 and \$200 bonus payments to fire districts and adjusts the distribution formula so that 1.75 percent of premiums received in the district are distributed to that district rather than the current rate of 2.25 percent (the rate of the distribution formula will match the rate of tax collected).

The committee recommends House Bill No. 1037 to provide that an insurer may not issue or renew a policy for property or casualty insurance after December 31, 1993, unless the application identifies each fire district in which insured property is located. The

bill requires the application to identify the percentage of insurance premiums attributable to property within each fire district, if the policy provides coverage for property that is not all within a single district. The bill imposes a penalty of \$100 for each violation. The bill requires the State Fire Marshal, with the assistance of the State Firemen's Association, to create maps of fire districts in the state for use in reporting by insurance companies. The bill requires the maps to be published before December 1 of each year beginning in 1993. The bill provides rulemaking authority to the Commissioner of Insurance to govern preparation of maps and reporting on insurance applications. The bill provides an appropriation of \$10,000 from the insurance tax distribution fund to the State Fire Marshal to create and publish fire district maps.

**TABLE A**

|  | <b>Insurance<br/>Tax<br/>Distribution<br/>Fund</b> | <b>General<br/>Fund</b> | <b>State<br/>Fire and<br/>Tornado<br/>Fund</b> |
|--|--|-------------------------|--|
| 1981-83 biennium - 1981<br>House Bill No. 1026                                       |  | \$3,811,500             |  |
| 1983 House Bill No. 1002 -<br>a deficiency appropriation<br>for the 1981-83 biennium |  |                         | \$1,003,016                                    |
| 1983-85 biennium - 1983<br>Senate Bill No. 2026                                      |  |                         | 4,811,500                                      |
| 1985-87 biennium - 1985<br>House Bill No. 1018                                       |  |                         | 5,200,000                                      |
| 1987-89 biennium - 1987<br>Senate Bill No. 2019                                      |  |                         | 5,200,000                                      |
| 1989-91 biennium - 1989<br>House Bill No. 1016                                       | \$2,600,000  |                         |  |
| 1991-93 biennium - 1991<br>Senate Bill No. 2010                                      | 5,200,000  |                         | 520,000  |

# 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 committee. The committee is responsible for legislative overview of the Garrison Diversion Unit Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Section 54-35-02.7 directs that the committee consist of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, the chairmen of the House and Senate standing Committees on Natural Resources, and the chairmen of the House and Senate standing Committees on Agriculture.

Committee members were Senators Gary J. Nelson (Chairman), Jim Dotzenrod, William G. Goetz, William S. Heigaard, Jerome Kelsh, Dean Meyer, and Dan Wogsland and Representatives Ronald A. Anderson, Richard Kloubec, Eugene Nicholas, Alice A. Olson, John Schneider, Scott B. Stofferahn, and Ben Tollefson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## HISTORY OF THE PROJECT

### Pick-Sloan Plan

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the federal Flood Control Act of 1944 (Pub. L. 78-534; 57 Stat. 887). The Pick-Sloan plan provided for construction of a series of dams on the Missouri River to control flooding, provide power generation, and maintain a dependable water supply for irrigation, municipalities, industry, recreation, wildlife habitat, and navigation. Approximately 550,000 acres of land in North Dakota were inundated by reservoirs on the Missouri River under the Pick-Sloan plan.

One feature of the Pick-Sloan plan was the Missouri-Souris Unit, which was the forerunner of the Garrison Diversion Unit. Under the plan for the Missouri-Souris Unit, water was to be diverted below the Fort Peck Dam in Montana and transported by canal for irrigating 1,275,000 acres; supplying municipalities in North Dakota, South Dakota, and Minnesota; restoring Devils Lake; conserving wildlife; and augmenting the Red River. The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). After considerable study and review of the Missouri-Souris Unit, Congress reauthorized the project as the initial stage, Garrison Diversion Unit, in August 1965 (Pub. L. 89-108; 83 Stat. 852).

### Garrison Diversion Unit

The first detailed investigations of the Garrison Diversion Unit were completed in 1957 and involved a proposed development of 1,007,000 acres. The initial stage of the Garrison Diversion Unit provided for irrigation service to 250,000 acres in North Dakota. This plan involved the construction of major supply works to transfer water from the Missouri River to the Souris, James, and Sheyenne rivers and the Devils Lake Basin. The plan also anticipated water service to 14 cities, provided for several recreation areas, and provided for a 146,530-acre wildlife plan to mitigate wildlife habitat losses resulting from project construction and enhancement of other wetland and waterfowl production areas.

Under the 1965 authorization the Snake Creek Pumping Plant would lift Missouri River water from Lake Sakakawea into Lake Audubon, an impoundment adjacent to Lake Sakakawea. From Lake Audubon the water would flow by gravity through the 73.6-mile McClusky Canal into Lonetree Reservoir, situated on the headwaters of the Sheyenne River. The Lonetree Reservoir would be created by construction of Lonetree Dam on the upper Sheyenne River, Wintering Dam on the headwaters of the Wintering River, and the James River dikes on the headwaters of the James River. Lonetree Reservoir is situated so that water can be diverted by gravity into the Souris, Red, and James River basins and the Devils Lake Basin.

The Velva Canal would convey project water from the Lonetree Reservoir to irrigate two areas totaling approximately 116,000 acres. The New Rockford Canal would convey project water for irrigation of approximately 21,000 acres near New Rockford and to deliver water into the James River feeder canal for use in the Oakes-LaMoure area. The Warwick Canal, an extension of the New Rockford Canal, would provide water for irrigation in the Warwick-McVille area and provide water for the restoration of the Devils Lake chain.

The United States Bureau of Reclamation has overall responsibility for operation and maintenance of the Garrison Diversion Unit and will operate and maintain all project works during the initial period following completion of construction.

A number of concerns have halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Project would allow transfer of foreign species of fish and other biota to the detriment of Canadian waters in violation of the Boundary Waters Treaty of 1909.
2. Numerous problems concerning wildlife mitigation and enhancement lands.
3. Legal suits brought by groups, such as the National Audubon Society, seeking to halt construction of the Garrison Diversion Unit by claiming that the project violates the National Environmental Policy Act and to enforce a stipu-

lation between the United States and Audubon to suspend construction until Congress reauthorizes the Garrison Diversion Unit.

### **Canadian Concerns**

Canadian interest in the Garrison Diversion Unit has centered on concerns that because the Garrison Diversion Unit involves a transfer of water from the Missouri River to the drainage basins of the Souris and Red rivers, the return flows entering Canada through the Souris and Red rivers would cause problems with regard to water quality and quantity.

In 1973 the Canadian government requested a moratorium on all further construction of the Garrison Diversion Unit until a mutually acceptable solution for the protection of the Canadian interests, under the Boundary Waters Treaty of 1909, was achieved. The United States government responded by stating its recognition of its obligation under the Boundary Waters Treaty and adopting a policy that no construction affecting Canada would be undertaken until it was clear that this obligation would be met.

During 1974 several bi-national meetings of officials were held to discuss and clarify the Canadian concerns over potential degradation of water quality. An agreement was reached in 1975 between the governments of Canada and the United States to refer to the International Joint Commission the matter of potential pollution of boundary waters by the Garrison Diversion Unit.

The International Joint Commission created the International Garrison Diversion Study Board. The board concluded that the Garrison Diversion Unit would have adverse impacts on water uses in Canada including adverse effects on flooding and water quality. The board specifically recommended that any direct transfer by the Garrison Diversion Unit of fish, fish eggs, fish larvae, and fish parasites be eliminated by adopting a closed system concept and the installation and use of a fish screen structure.

In August 1984 representatives of Canada and the United States announced a general agreement between the two governments that Phase I of the initial stage of the Garrison Diversion Unit could be constructed. Canada, however, remained firmly opposed to the construction of any features that could affect waters flowing into Canada.

### **Garrison Diversion Unit Commission**

The water and energy appropriations bill, signed by the President on July 16, 1984, contained an agreement to establish a commission to review the Garrison Diversion Unit.

The Secretary of the Interior appointed a 12-member Garrison Diversion Unit Commission to review the Garrison Diversion Unit in North Dakota. The commission was directed to examine, review, evaluate, and make recommendations regarding the existing water needs of North Dakota and to propose modifications to the Garrison Diversion Unit before December 31, 1984. Construction on the project was suspended from October 1 through December 31, 1984.

The commission worked under the restriction that any recommendation of the commission must be approved by at least eight of the 12 members and that

should the commission fail to make recommendations as required by law, the Secretary of the Interior was authorized to proceed with construction of the Garrison Diversion Unit as designed.

Congress directed the commission to consider 11 specific areas:

1. The costs and benefits to North Dakota as a result of the Pick-Sloan Missouri Basin program.
2. The possibility for North Dakota to use Missouri River water.
3. The need to construct additional facilities to use Missouri River water.
4. Municipal and industrial water needs and the possibility for development, including quality of water and related problems.
5. The possibility of recharging ground water systems for cities and industries, as well as for irrigation.
6. The current North Dakota water plan to see if parts of the plan should be recommended for federal funding.
7. Whether the Garrison Diversion Unit can be redesigned and reformulated.
8. The institutional and tax equity issues as they relate to the authorized project and alternative proposals.
9. The financial and economic impacts of the Garrison Diversion Unit, when compared with alternative proposals for irrigation and municipal and industrial water supply.
10. The environmental impacts of water development alternatives, compared with those of the Garrison Diversion Unit.
11. The international impacts of the water development alternatives, compared with those of the Garrison Diversion Unit.

The commission released its final report and recommendations on December 20, 1984. The commission affirmed the existence of a federal obligation to the state of North Dakota for its contribution to the Pick-Sloan Missouri Basin program but recommended that an alternative plan be implemented in place of the 250,000-acre initial stage of the Garrison Diversion Unit as authorized in 1965 and the original project authorization in 1944. The commission recommended that Lonetree Dam not be completed at this time and that the Sykeston Canal be constructed as the functional replacement. The commission specifically said, while the Lonetree Dam and Reservoir should remain an authorized feature of the plan, that construction should be deferred pending a determination by the Secretary of the Interior consisting of a demonstration of satisfactory conclusion of consultations with Canada and after appropriation of funds by Congress. The commission recommended that the Garrison Diversion Unit be configured to provide irrigation service to 130,940 acres in the Missouri and James River basins instead of the initial stage 250,000-acre project. The commission also recommended that the first phase of the Glover Reservoir be included as a feature of the plan in lieu of Taayer Reservoir for regulation of flows in the James River.

The commission further recommended the establishment of a municipal, rural, and industrial system for treatment and delivery of quality water to ap-



proximately 130 communities in North Dakota. A municipal and industrial water treatment plant with a capacity of 130 cubic feet per second was recommended to provide filtration and disinfection of water releases to the Sheyenne River for use in the Fargo and Grand Forks areas.

An alternate state plan for municipal water development was submitted to the Garrison Diversion Unit Commission by then Governor Olson and Governor-elect Sinner, proposing that the state would design and construct the water systems and pay 25 percent of their costs. In return, the federal government would provide up to \$200 million in nonreimbursable funds for municipal water development projects. The federal government would pay 75 percent of the construction costs of the systems with only the operation and maintenance costs borne by the benefiting cities.

### **Garrison Diversion Unit Reformulation**

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Reformulation Act of 1986, Public Law 99-294, 100 Stat. 433. This legislation was approved by representatives of the state of North Dakota, the Garrison Diversion Conservancy District, the National Audubon Society, and the National Wildlife Federation.

The legislation addressed the James River by directing a comprehensive study of effects over the next two years during which time construction of the James River Feeder Canal, the Sykeston Canal, and any James River improvements could not be undertaken. Of the 32,000-acre New Rockford Extension, included in the Garrison Diversion Unit Commission final report, 4,000 acres were transferred to the West Oakes area and 28,000 acres were authorized for development within the Missouri River Basin.

The legislation also provided for:

1. 130,940 acres of irrigation.
2. Deauthorization of the 1944 Flood Control Act and the 1965 Garrison authorization.
3. Preservation of North Dakota's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed prior to enactment which will no longer be employed to full capacity, to the extent of the unused capacity.
5. Acre-for-acre mitigation based on ecological equivalency rather than the 1982 mitigation plan.
6. Deauthorization of the Taayer Reservoir and purchase of the Kraft Slough for waterfowl habitat.
7. Continued authorization, but no construction, of the Lonetree Reservoir. The Sykeston Canal was mandated for construction following required engineering, operational, biological, and economic studies. The Lonetree Reservoir could be built if:
  - a. The Secretary of the Interior determines a need for the dam and reservoir;
  - b. Consultations with Canada are satisfactorily completed; and
  - c. The Secretaries of State and the Interior certify determinations to Congress and 90

days have elapsed.

8. No construction of irrigation acreage other than on the Indian reservations or the 5,000-acre Oakes Test Area until after September 30, 1990.
9. A \$200 million grant for construction of municipal and industrial water delivery systems. A \$40.5 million nonreimbursable water treatment facility to deliver 100 cubic feet per second to Fargo and Grand Forks was authorized. All water entering the Hudson Bay drainage must be treated and must comply with the Boundary Waters Treaty of 1909.
10. Municipal and industrial water delivery systems for the Fort Berthold, Fort Totten, and Standing Rock reservations.
11. Irrigation soil surveys that must include investigations for toxic or hazardous elements.
12. Federal participation in a wetlands trust to preserve, enhance, restore, and manage wetland habitat in North Dakota.

### **Garrison Municipal, Rural, and Industrial Water Supply Program**

Included within the Garrison Diversion Reformulation Act of 1986 is an authorization enabling Congress to appropriate \$200 million for the Garrison municipal, rural, and industrial water supply program. These funds are to be utilized for the planning and construction of water supply facilities for municipal, rural, and industrial use throughout the state.

On July 18, 1986, the Garrison Diversion Conservancy District and the North Dakota State Water Commission entered an agreement for the joint exercise of governmental powers. This agreement allows the district to use the expertise of the commission in developing and implementing the water supply program. In addition, the district is to enter into a cooperative agreement with the Secretary of the Interior and the district is the fiscal agent for the state concerning money received and payments made to the United States for the water supply program.

On November 19, 1986, the United States and the Garrison Diversion Conservancy District entered into an agreement that designates the district to act on behalf of the state of North Dakota in the planning and construction, as well as the operation and maintenance, of the water systems constructed pursuant to the Garrison Diversion Reformulation Act of 1986. This agreement contains a definition of the responsibilities of the United States and the district under the agreement, provisions concerning the work to be undertaken by the district, stipulations concerning the transfer of funds, and the procedure for reporting, accounting, and reviewing the planning and construction programs. The agreement also provides that the Southwest Pipeline Project is eligible to receive funding under this program.

Another important aspect of the water supply program is that to be eligible for financial assistance for construction of a water supply project under the program, applications must be submitted by a local governmental entity and must be supported by a preliminary report and followed by a feasibility report. The preliminary report is to contain the following information:

1. Name of project sponsor;

2. Purpose and description of the project together with a map showing the project area;
3. Potential user interest;
4. Source of water supply;
5. Preliminary plan for the project with alternative plans where appropriate;
6. Preliminary cost estimate for both capital costs and operation, maintenance, and replacement costs; and
7. Repayment concepts including user costs and project financing plans.

Following approval of the preliminary report by the State Water Commission, a feasibility report must be submitted before the project can be approved for funding. This report is to contain the following information:

1. Purpose and description of the project together with a map showing the project area and proposed facilities;
2. Source of water supply;
3. Project plans with alternative plans where appropriate;
4. Description of water treatment and storage facilities proposed;
5. Design criteria including population projections and water demands;
6. Interest survey of potential water users;
7. Environmental assessment;
8. Discussion of permit requirements and responsibilities;
9. Cost estimates for capital and operation, maintenance, and replacement costs;
10. Cost of water to users; and
11. Financial plan for the project.

Once these steps have been satisfactorily completed, the project sponsors may then seek financial assistance to proceed with the design and commence construction of the project.

### LEGAL ISSUES

Throughout the interim legal counsel for the Garrison Diversion Conservancy District informed the committee on the progress of the litigation surrounding the project.

In 1971 the Garrison Diversion Conservancy District conveyed the lakebed of Devils Lake to the United States as a partial payment for certain nonfederal costs of the Garrison Diversion Unit. The conveyance was based upon the premise that the state had title to the lakebed up to the surveyed meander line around Devils Lake. The state conveyed 62,370 acres (of a total 83,046 acres below the meander line) and was given a monetary credit of \$3,637,750. However, the North Dakota Supreme Court in **In the Matter of the Ownership of the Bed of Devils Lake**, 423 N.W.2d 141 (N.D. 1988), and the United States Court of Appeals in **101 Ranch v. United States**, 905 F.2d 180 (8th Cir. 1990), ruled that the boundary between the public lakebed and the private upland is ambulatory (i.e., fluctuates with the elevation of the lake), so questions have been raised about the value of the state's conveyance of lakebed.

Meanwhile, the Devils Lake Sioux Tribe initiated a quiet title action concerning the entire lakebed. The tribe contends that the United States owns the lakebed in trust for the tribe and that North Dakota never

acquired the lakebed at the time of statehood. The defendants successfully moved to dismiss the lawsuit in the United States District Court, primarily because it appeared that the tribe had been compensated for the taking of the lakebed in a 1977 Indian claims commission settlement, but the United States Court of Appeals for the Eighth Circuit remanded the case to the district court for a trial on the merits.

This case has significant implications for the state of North Dakota, the city of Devils Lake, and all riparian landowners around Devils Lake. The tribe claims, among other things, that the bed of Devils Lake "is all lands up to and including the ordinary high water mark at the time of the treaty of February 19, 1867, 15 Stat. 505, which plaintiff currently believes to be an elevation of approximately 1,439 feet MSL." This elevation is several feet higher than the approximate elevation of the surveyed meander line around Devils Lake. Accordingly, if the Devils Lake Sioux Tribe prevails in the quiet title action, many landowners, including landowners within the city of Devils Lake, could be divested of their title to the "riparian" land. Also, the Garrison Diversion Conservancy District may be asked to reimburse the United States for the amount of the credit it received for transferring the lakebed to the United States in payment of a portion of the recreation component of the Garrison Diversion Unit Project.

### PROJECT UPDATE

Throughout the interim the committee received updates concerning the Garrison Diversion Unit Project from representatives of the Garrison Diversion Conservancy District, State Water Commission, and the United States Bureau of Reclamation.

### Appropriations

Congress appropriated \$33 million for the Garrison Diversion Unit Project for fiscal year 1992. Of this amount, approximately \$20 million was expended for the Garrison municipal, rural, and industrial water supply program, including \$4 million of carryover funds from 1991. For fiscal year 1993, Congress appropriated \$30 million. Of this amount, approximately \$18,400,000 is designed for municipal, rural, and industrial water supply programs; \$750,000 for recreation purposes; and approximately \$5 million for mitigation and enhancement purposes. Of the \$200 million authorized for the Garrison municipal, rural, and industrial water supply program, approximately \$81 million has been received or budgeted since 1986 for these programs pursuant to the Garrison Diversion Reformulation Act of 1986.

### McClusky and New Rockford Canals

On October 1, 1991, the Garrison Diversion Conservancy District assumed operation and maintenance of the McClusky and New Rockford canals from the Bureau of Reclamation. This is intended to give conservancy district personnel experience in operating and maintaining these features of the project.

### 1991 Five-Year Phased Development Plan

Representatives of the Garrison Diversion Conservancy District also presented the 1991 five-year phased development plan for the Garrison Diversion Unit

Project. This plan was developed to meet the critical water needs of central and eastern North Dakota. The plan calls for the phased rehabilitation and maintenance of the McClusky Canal at a minimum capacity of 500 cubic feet per second, construction of a central reservoir as approved by the United States-Canada Consultative Group, completion of the New Rockford Canal, construction of the James River Feeder Canal, stabilization of portions of the upper and lower James River to pass project flows of up to a maximum of 145 cubic feet per second, and construction of the Devils Lake Pipeline and Sheyenne River Treatment Plant. The total cost of the projects identified in the plan is \$137,700,000.

### **Governor's Water Strategy Task Force**

In April 1991 the Governor issued Executive Order No. 1991-3, which established the Governor's Water Strategy Task Force. The mission of the water strategy task force was to:

1. Review funding options to implement existing water policies of the state in water-related political subdivisions.
2. Develop by October 1, 1991, a water development program and a funding strategy for submission to a special session of the Legislative Assembly in November 1991.
3. Develop by December 1, 1991, a plan for advocating a comprehensive state water policy to the administration and to Congress.

The water strategy task force was composed of people representing different interests concerned with water resource development throughout the state. Representatives of the Governor's Water Strategy Task Force kept the committee apprised of its activities throughout the early part of the interim. The task force determined that the development of North Dakota's water resources is important to the people of this state and that the state should do more to develop its water resources and that additional funds are required to develop these water resources.

### **Water Improvement or Supply Projects**

The State Water Commission has received applications from 121 North Dakota communities concerning water improvement projects under the Garrison municipal, rural, and industrial water supply program. The State Water Commission has identified costs of \$1,211,581 for feasibility studies and \$462,776,331 for construction of those projects. Eleven projects have been completed and nine additional projects are in design or under construction. The

remaining projects are in reconnaissance or feasibility studies.

The Southwest Pipeline began supplying water to Dickinson on October 15, 1991. The pipeline has been Dickinson's sole source of water since that date. The current cost to the city is \$2.28 per thousand gallons. This figure includes an operation, maintenance, and replacement cost of \$1.66 and a capital repayment component of 62 cents.

### **Bureau of Reclamation Projects**

Representatives of the Bureau of Reclamation reported that the bureau is emphasizing the completion of features of the Garrison Diversion Unit Project that were authorized in the Garrison Diversion Reformulation Act of 1986. These supported programs include the operation and maintenance of the completed features of the project, including the Snake Creek Pumping Plant, McClusky Canal, New Rockford Canal, and the Oakes Test Area.

The bureau continued its research activities at the Oakes Test Area. These studies included research on best management practices and other irrigation-related research. During the 1992 irrigation season, 1,390 acres were irrigated at the Oakes Test Area.

The bureau continued to formulate a conceptual development plan for the Turtle Lake irrigation area and is working with the various Indian tribes concerning irrigation on the state's Indian reservations. The Garrison Diversion Reformulation Act of 1986 authorized development of 15,200 acres of irrigation on the Fort Berthold Reservation and 2,380 acres of irrigation on the Standing Rock Reservation.

Other projects that the bureau is working on include the Garrison municipal, rural, and industrial water supply program; Indian municipal, rural, and industrial water supply; wildlife programs; and recreation programs. The Garrison Diversion Reformulation Act of 1986 directs the bureau to develop the 33,000-acre Lonetree Wildlife Management Area, one of the major wildlife programs, and manage it for wildlife purposes through an agreement with the state. To date, 22,000 acres have been developed by the bureau and are ready for transfer to the state. The bureau has entered into an interim cooperative agreement with the North Dakota Game and Fish Department to assume management of the Lonetree Wildlife Management Area, but the state has yet to assume management.

The bureau is at 150 percent of concurrency for mitigating the environmental impacts of the Garrison Diversion Unit Project.

# HEALTH CARE COMMITTEE

The Health Care Committee was assigned three studies. House Concurrent Resolution No. 3010 directed a study of the need for and feasibility of adopting and implementing a state health policy for the purpose of providing basic medical and health care to all citizens of the state. Senate Concurrent Resolution No. 4002 directed a study of the feasibility and ramifications of adopting and implementing a state-subsidized health insurance program for uninsured and underinsured residents. Senate Concurrent Resolution No. 4047 directed a study of the availability of capital to North Dakota hospitals and the role of the Bank of North Dakota in assuring that capital is available at the lowest possible cost. The committee was also directed to receive a report from the Commissioner of Insurance relating to basic health insurance coverage.

Committee members were Representatives Ronald A. Anderson (Chairman), Audrey Cleary, Judy L. DeMers, Kathi Gilmore, Art Goffe, RaeAnn Kelsch, Dagne B. Olsen, Ken Svedjan, Francis J. Wald, and Joseph R. Whalen and Senators Erwin M. Hanson, Tish Kelly, Jay Lindgren, and Tim Mathern.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## STATE HEALTH POLICY AND STATE-SUBSIDIZED HEALTH INSURANCE STUDIES

### Background

The legislative history of House Concurrent Resolution No. 3010 shows there is concern about the provision of health care to North Dakotans. Testimony before standing committees stated a need to create a focus for health care reform efforts. By comprehensively reviewing health care systems and other aspects of health care delivery, a common focus should eventually emerge.

The legislative history of Senate Concurrent Resolution No. 4002 reflects a belief that studying the feasibility of a state-subsidized health insurance program for the state's uninsured and underinsured would assist the state in finding a solution to a problem that grows more serious each year. Because a large number of North Dakotans between 21 and 65 years of age do not have health insurance coverage or are not eligible for Medicaid, a way to improve access and affordability needs to be found.

The committee reviewed information to determine the extent of the health care crisis. The number of uninsured people and the people who make up the uninsured population were reviewed. According to a 1989 survey of health insurance coverage in North Dakota conducted by the Bureau of Governmental Affairs at the University of North Dakota, approximately 8.8 percent of North Dakotans were without health care coverage. Over twice as many of those identified as uninsured were between the ages of 18 and 29, and nearly one-fifth of the uninsured worked in unskilled jobs. The survey results showed that two-thirds of the uninsured were employed; however,

27 percent of the uninsured were employed part time. Over two-thirds of the uninsured had household incomes of less than \$20,000 per year and over 80 percent of the uninsured had a high school education or less. The survey results indicated that nearly 15 percent of the uninsured used hospital emergency rooms and the most frequent method of payment was on a time-pay basis. Over 15 percent of those who used emergency rooms and over 12 percent of those hospitalized could not pay for the services. There was also evidence that approximately one to two percent of the bill of a paying health care service consumer is attributable to the cost of services provided for uninsured people from whom payment for the services is not received.

### Access to Health Care Insurance and Services in the State

North Dakota Century Code Chapter 50-24.1 establishes the state's medical assistance program for needy persons. The program pays for a wide range of medical services from licensed medical providers for persons receiving aid to families with dependent children or supplemental security income. The program is also available to persons who meet the technical eligibility requirements of aid to families with dependent children or supplemental security income but have sufficient income to meet their basic living needs exclusive of medical care costs.

Significant changes to the state Medicaid program have been required by the Medicare Catastrophic Coverage Act of 1988. That Act requires state programs to pay for the cost-sharing requirements of all Medicare-eligible populations with incomes below the federal poverty level. The Act also requires state programs to extend Medicaid coverage to pregnant women and to children up to age 1 with family incomes below the federal poverty level. Pregnant women are eligible to receive pregnancy-related services while the children must receive all benefits included in the state plan and provided to cash assistance recipients. This requirement has also been phased in with a two-year schedule and since July 1, 1990, states have been required to cover children up to age 1 and pregnant women with incomes at or below 100 percent of poverty level.

### Comprehensive Health Association of North Dakota

The Comprehensive Health Association was created by the 1981 Legislative Assembly as a pool of insurance companies to provide health insurance coverage to persons who were unable to receive coverage elsewhere. The association's participating membership consists of those insurers doing business in North Dakota with an annual premium value of accident and health insurance contracts amounting to at least \$100,000 for the previous calendar year. Insurance companies are required to maintain membership in the association as a condition for writing accident and health insurance policies in North Dakota. To be eligible for enrollment a person must have been rejected for accident and health insurance by

one company, or have been subject to restrictive riders or preexisting conditions limitations, the effect of which is to substantially reduce coverage from that coverage typically received by a person considered a standard risk by an insurance company. The person has to have been a resident of the state for at least six months. The Comprehensive Health Association plan premium charged eligible persons is limited to 135 percent of the average premium rates charged by the five largest insurance companies in the state.

### **1991 Legislation**

The 1991 Legislative Assembly enacted House Bill No. 1042, which allowed basic health insurance coverage plans to be offered without certain mandated coverages to individuals and to employers with fewer than 25 employees who have been without insurance coverage for at least 12 months preceding the date of application for coverage. This bill was proposed by the Legislative Council's 1989-90 Interim Industry and Business Committee as a result of a study conducted of the health care insurance needs of uninsured and underinsured persons. The mandated coverages that may be excluded from basic health insurance coverage plans include coverage for the care and treatment of a person's substance abuse, coverage for the care and treatment of mental disorders, coverage for mammogram examinations, coverage for surgical and nonsurgical treatment of temporomandibular joint disorder, and craniomandibular disorder. The basic health insurance coverage is also exempt from the requirement that an insured or a subscriber has the right to employ the doctor or enter the hospital of that person's choice and from the prohibition of discrimination in optometric services provided by a physician or an optometrist. A person subscribing to basic health insurance coverage may opt to receive any of the coverages that are specifically exempted from basic health coverage. An insurer may charge an additional premium for each coverage provided.

The 1991 Legislative Assembly also considered House Bill No. 1043, which would have prohibited the introduction of legislation or the consideration of amendments mandating health insurance coverage or various other components of health insurance plans unless the proposal was accompanied by a report prepared by the Commissioner of Insurance assessing the impact of the proposal. That bill failed to pass the Senate.

Another bill considered by the 1991 Legislative Assembly was Senate Bill No. 2053, which would have required the Department of Human Services to adopt options available under federal law to extend eligibility for medical assistance under Medicaid to certain infants and pregnant women. That bill also failed to pass the Senate.

House Bill No. 1006 (1991) included an appropriation for the North Dakota Health Task Force. The Health Task Force was organized by the State Health Council and is to try to establish a state health policy and to address other health care issues. House Concurrent Resolution No. 3010 (1991) encouraged the Legislative Council to receive and consider the reports and recommendations of the Health Task Force in its study of the need for and feasibility of

implementing a state health policy for the citizens of North Dakota.

House Bill No. 1477 (1991) required all entities performing utilization review to certify to the Commissioner of Insurance that they meet specified minimum standards. The entities must supply the commissioner with information regarding review criteria used in evaluating proposed or delivered health care services, the process by which a patient or health care provider can appeal an adverse decision, the qualifications of reviewing personnel, and determinations by reviewing personnel.

### **Health Care Legislation in Other Jurisdictions**

#### **California**

In 1989 the California Legislature enacted the Tucker Health Insurance Act of 1989, which requires every employer employing five or more persons to provide specified health coverage to every employee who works at least 125 hours per month for any single employer. An employer is not required to provide health care coverage for an employee if that employer is not the employee's principal employer. A principal employer is an employer for whom an employee works the greatest number of hours in a month. The employer is required to continue payments for health care coverage for up to three calendar months if an employee is prevented by sickness from working and earning wages and sick leave benefits are exhausted. Employers may form associations for the purpose of providing health care coverage by pooling employees in order to obtain group rates and coverage and by providing for self-funded employer-sponsored health care coverage. Any employer who fails to provide health care coverage for employees must pay for the health care costs incurred by an eligible employee during the period in which the employer failed to provide coverage.

#### **Connecticut**

Connecticut's General Assembly approved a plan, effective July 1, 1990, which adopted a public-private partnership approach, expanding state-subsidized insurance programs and instituting insurance market reforms. The priority populations affected by the legislation are pregnant women, children, the disabled, and the working uninsured. The plan allows the Department of Income Maintenance to expand Medicaid eligibility of children between ages 6 and 8 whose family income falls below 100 percent of the federal poverty level, beginning July 1, 1991. The plan also allows Medicaid to pay an employee's share of premiums in an employer's health program as an incentive for employees to accept employment-based coverage when it is available. The expansion of "direct services" provided mainly through federally subsidized community health centers is being facilitated by awarding three-year grants to cover operating expenses, recruiting, and subsidizing the salaries of physicians and capital improvements. Persons using these direct services are to pay on an income-based sliding scale. The plan also expands the number of slots available from 50 to 125 to permit Medicaid to pay for home and community-based services for disabled children and adults. In its attempt to cover

children and pregnant women, the plan allows the Department of Health Services to contract for subsidized, nongroup insurance for low income children and pregnant women who are not eligible for Medicaid. The plan stipulates that the contract must include an income-based sliding fee scale as well as cost controls. The department is also authorized to contract for nongroup insurance for disabled residents with incomes below 200 percent of poverty level.

In addition to providing benefits to the priority populations, the plan contains provisions expected to reform the small business insurance market in order to help workers who are not being offered insurance or who cannot afford it. The new law prohibits medical underwriting of individuals and groups, creates a reinsurance mechanism that allows companies insuring high risk individuals in a small group to offer group premiums priced at no more than 150 percent of standard risk premiums, and requires the development of special transition policies for small firms that have not been offered insurance previously.

### **Hawaii**

In 1974 Hawaii passed a Prepaid Health Care Act, which requires employers to offer health insurance to an employee who has completed at least four consecutive weeks of work, who works a minimum of 20 hours per week, and who has a monthly wage of at least 86.67 times the minimum hourly wage. The Act requires employers to pay at least one-half the cost of the health insurance premium. Employees are obligated to contribute 1.5 percent of their monthly gross earnings toward the cost. If 50 percent of the premium is greater than 1.5 percent of the employee's gross wages, the employer must contribute the remainder of the premium. An employee may waive the required health care benefits required under the Act under certain circumstances. An employee may consent to pay a greater share of the employee's wages and may consent to withholding of that share by the employer for the purpose of providing prepaid health care benefits for the employee's dependents.

The Act has resulted in 98 percent of Hawaiians having some type of medical insurance. Hawaii's average health insurance premium is one of the lowest in the United States, at \$263 per month per family. The state health insurance program that began in 1990 is an extension of the plan and insures more than 10,000 people at an annual cost of less than \$1,000 per person.

### **Oregon**

In 1989 Oregon adopted a system to guarantee access to adequate health care within that state. The Oregon program would raise Oregon's Medicaid eligibility income threshold from 58 percent of the federal poverty level to 100 percent and would tax employers who fail to provide health insurance for their workers. To implement the program, Oregon applied for a waiver from current Medicaid regulations by Congress or the Health Care Financing Administration.

The Oregon Act limits the range of health services provided to "the socially acceptable minimum level of care to which everyone should have access." The State Health Services Commission was assigned the

task of setting priorities for health care based on the cost effectiveness and social value of the services.

The Health Services Commission is composed of five physicians, four consumers, a public health nurse, and a social services worker. The commission developed a list of 709 items defined in condition/treatment pairs. The pairs were assigned to 17 categories of care. The categories were put in order and pairs within each category were then ranked. Each category was defined as either "essential," "very important," or "valuable to certain individuals." "Essential" services include those necessary to preserve life, maternity care, preventive care for children and adults, reproductive services, and comfort care for the terminally ill. To be defined as essential, the services must be effective, contribute to the quality of life, give good value for the dollar, and demonstrate community compassion for the terminally ill. The "very important" services include treatment for nonfatal conditions in which there is full or partial recovery and treatment will improve the quality of life. Services categorized as "valuable to certain individuals" include those services provided for nonfatal conditions where treatment merely speeds recovery, fertility services, and services where treatment provides for little improvement in the quality of life.

The commission recommended that the Oregon Legislative Assembly use the prioritized list to determine the standard benefit package to be offered under the Oregon plan and also recommended that the services in the "essential" and the "very important" categories be included in the standard benefit package.

The commission recommended that every person should be entitled to a diagnosis as part of a standard benefit package. Upon receiving a diagnosis, coverage for that person's treatment would be determined by the position of the condition/treatment pair on the list.

In ranking the 709 condition/treatment pairs, the commission used research and expert testimony on the effectiveness of treatments; used a formula that considered the cost and benefit of each treatment; reviewed public values gleaned from community meetings, public hearings, and telephone surveys; established categories that grouped services to reflect the commission's sense of what was most important to the people of Oregon; and used the members' independent judgment. The commission ranked mental health and chemical dependency services independently of physical medicine. The commission then recommended that mental health and chemical dependency services be integrated into the prioritized list for implementation in two to four years.

The commission has received estimates from independent actuaries on how much it will cost to provide 11 possible benefit packages to the people of Oregon. The list of prices would be used by the Legislative Assembly to allocate the funds to determine the standard benefit package. Oregon expected to implement the new program by July 1992; however, the federal government disapproved the waiver upon a finding that certain provisions of the Oregon proposal violated the federal Americans with Disabilities Act.

## Washington

The Washington basic health plan, created in 1987, is intended to ensure that individuals who lack health insurance coverage are provided with necessary basic health services in an appropriate setting. The Washington basic health plan office was created to administer and oversee the program, to select a benefits package, to design a sliding fee scale, to determine cost-savings mechanisms, and to negotiate with providers who wish to participate in the program. An individual must be under 65 and have a gross family income that is at or below 200 percent of the federal poverty level to be eligible for the plan. Coinsurance premiums are required, based upon gross family income, but are decreased for lower income individuals. Families below the poverty level pay approximately 10 to 15 percent of the cost of providing the benefits and those enrollees who are at or above 200 percent of the poverty level pay the full cost. The state-subsidized portion of the premium is funded from state general funds. There is a 30,000 cap on the number of individuals that can receive subsidies, and the law was due to be reviewed in 1992.

The Washington basic health plan has been in operation for two and one-half years. During that time the basic health plan has contracted for health service delivery with 15 managed health care systems in all or parts of 14 counties in Washington. The basic health plan has served over 25,000 of Washington's uninsured citizens, and the enrollment level, as of August 1, 1991, was 19,651. The health plan has streamlined administrative procedures and has expanded program outreach through state and local agencies serving the working poor. According to an August 1991 Washington basic health plan status report, the average family contribution per month is \$33.26 and the average state subsidy per family per month is \$185.82. This results in an average pay per family per month of \$219.08. The average family income of enrolled families is \$8,995 per year, and the average family size is 2.4. Of the enrolled members, 43.7 percent are single, 47.9 percent are families with children, 6.6 percent are couples without children, and 1.8 percent are families that only enroll the children. The average age of children enrolled in the program is 8.1 years, and the average age of adults enrolled in the program is 39.1 years.

## Employee Retirement Income Security Act

The Employee Retirement Income Security Act of 1974, generally known as ERISA, comprehensively regulates employee pension and welfare plans. An employee welfare benefit plan or welfare plan is defined as one that provides to employees "medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, [or] death," whether these benefits are provided "through the purchase of insurance or otherwise." The ERISA imposes upon pension plans a variety of substantive requirements relating to participation, funding, and vesting. It also establishes various uniform procedural standards relating to reporting, disclosure, and fiduciary responsibilities for both pension and welfare plans. The ERISA contains three provisions in 29 U.S.C. 1144 which define the scope of federal preemption under ERISA. The first provision states that

ERISA supersedes "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." That preemption is substantially qualified by what is called the "insurance saving clause," which broadly states that, with one exception, nothing in ERISA "shall be construed to exempt or relieve any person from any law of any state which regulates insurance, banking, or securities." The one specified exemption to the insurance saving clause is the so-called "deemer clause," which states that no employee benefit plan, with certain exceptions, "shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company, or to be engaged in the business of insurance or banking for purposes of any law of any state purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies." The "deemer clause" has come into play in some ways to distinguish insured and uninsured plans in the context of the issue of whether ERISA preempts state-mandated benefit statutes as applied to uninsured plans. Courts have determined this clause prohibits a state from regulating the self-insured ERISA employee benefit plan as if it were an insurance company. While state-mandated benefit statutes may not be preempted by ERISA with respect to insured ERISA employee benefit plans, state insurance regulations may be preempted by ERISA when applied to self-funded or uninsured ERISA plans.

## Testimony and Committee Considerations

Testimony received by the committee emphasized the problems in the current system. The factors repeatedly cited as contributing to the health care crisis are health care inflation, aging population, excessive administrative costs, and costs incurred due to technological advances in diagnosing and treating various illnesses and conditions. The committee heard testimony that suggested that no matter what health care reform is undertaken, health care will never be affordable for everyone without the implementation of cost-containment measures.

## Canadian Health Care System

One of the systems that was suggested as a model for health care reform in the United States and in North Dakota is the Canadian health care system. A representative from the Canadian Department of Health and Welfare addressed the committee and provided specific information on the Canadian system. Of the three types of socialized insurance systems, the "Bismarck" model is the system used in Canada. The "Bismarck" model of social insurance was set up in the late 1800s to take care of workers during interruptions of earnings due to unemployment, disability, sickness, and retirement. Payment made under the Canadian health care system is according to the "Bismarck" social insurance theories. The government is the insurer and medical practitioners are accountable to the government. The government generally displaces private insurers as the payor.

Comprehensive social insurance in Canada started during the postwar reconstruction era and arose from prairie agrarian movements in Saskatchewan. The Saskatchewan universal hospital plan was the eventual model for the Canadian system. Between 1948

and 1957 four provinces developed health care systems patterned after Saskatchewan's and all provinces had universal health care plans by 1961. It took 20 years to get all the plans into place on a national scale.

The revenue used to operate the Canadian health care system is consolidated revenue derived from all taxes. The system raises revenue through premiums and sales taxes but the most important source of revenue is the graduated income tax. Seventy-five percent of the Canadian health care system is tax supported and is generally supported through income taxes. The federal government provides grants-in-aid to the provinces for health care. The provinces have sole jurisdiction over who and what is paid, subject to requirements to receive grants-in-aid.

The Canadian health care system contains a home and host province rate system. A person's home province is responsible for health care coverage, but payment must be made at the rate charged in the province where medical care is given. A person receives health care through the Canadian health care system without paying a fee. Private insurance is still used, however, to provide supplementary and additional benefits, and private insurers are also used as partners in the administration of provincial plans.

Under the Canadian health care system, a person's progression through the evaluation processes is assessed to determine which types of health benefits are appropriate. The need for medical services is judged by the treating professional. The Canadian health care system is a relatively closed system. Private medical providers rarely refuse treatment to a patient due to the patient's inability to pay. A Canadian citizen who receives medical treatment out of the country will be covered for those services if they were the result of an emergency, but elective procedures performed outside of the country are not necessarily covered. There is a chance that an elective service would be paid for after a review of the circumstances that led a person to seek the treatment.

Different ethnicities and Canadian aboriginal groups have health problems that may be unique to their groups. There is no distinction made, however, on the care provided to Canadians based on their ethnicities or heritage. Canada targets high risk populations for health education issues and regulates those populations according to those standards. Canada is not geared toward medical research and development. Research and development is minimal partly as a result of allocating expenses to different areas.

In spite of universal access policies, inequity still exists between socioeconomic classes in Canada. Canadian social differentials are smaller than United States differentials. Medical malpractice insurance rates are much lower in Canada and are close to one-tenth of the rates in the United States. The range of malpractice insurance premiums is from \$2,000 to \$4,200 per year depending on the professional's specialty. The provincial plans pay part of the premium cost.

## **Medical Care Savings Accounts**

Testimony was presented on medical care savings accounts. Medical care savings accounts would redistribute money that has historically been paid to insurance companies. An employer would buy a high deductible catastrophic health insurance policy. From the money the employer saved as a result of having a lower premium, the employer would give a set amount to employees to pay for the low dollar claims. Money an employee did not spend on health care would be the employee's and it would roll over into a medical individual retirement account. If the employee uses the annual allowance, the insurance would be responsible for additional health care costs.

## **Community Rating**

The committee received testimony on community rating practices. The idea of charging the same premium rate for all subscribers (community rating) was based on principles of social equity, which placed the financial burden equally on all subscribers. Gradually, this system was replaced with one that placed the financial burden on those who received the most services. Testimony stated that community rating is an extreme in insurance rating. A more popular approach would be to combine aspects of both systems.

## **Health Care America**

Testimony on Health Care America represented it as the "new Medicare" program. Health Care America is the program designed and endorsed by the American Association of Retired Persons to contain health care costs. Employers would either pay to enroll employees in Health Care America or provide private health insurance that would meet new Medicare standards. The program is viewed as a strengthened, improved, expanded services program, not a cost-saving one.

## **North Dakota Health Task Force**

The State Health Council organized the North Dakota Health Task Force in 1990. The task force identified six critical areas in its review of the health care crisis. Those areas are cost, education/prevention, access, regulation, manpower, and health care policy and delivery systems. The task force is attempting to take a fresh approach to resolving problem areas in health care.

The task force formed a subcommittee to formulate possible health care strategies to be used to apply for a grant from the Robert Wood Johnson Foundation. The proposal submitted for the grant was entitled "The North Dakota Health Care Redistribution and Rural Development Model." The lead agency is the North Dakota Department of Health and Consolidated Laboratories with the designated interagency working group being the North Dakota Health Task Force. The ultimate proposal presented in the grant application contained two reforms. One reform is to develop a prospective all payers ratesetting system that will control costs and redistribute dollars toward improved access to health services. The second reform is to develop a mechanism to provide universal health insurance coverage for the people of North Dakota.



The task force received a grant of \$671,337 from the Robert Wood Johnson Foundation. The grant will provide technical assistance and administrative expenses for the task force in its study of health care financing systems and health care provision mechanisms. The grant is to be used over a two-year period and at the end of that period it is likely the task force will propose legislation.

The all payers ratesetting system proposed to be developed by the Health Task Force would retain numerous payers rather than going to a single payer system similar to the one in Canada. The task force believes that there is adequate money in the health care system; however, it should be redistributed to be used more efficiently.

### **Blue Cross Blue Shield Reform Commission**

The Blue Cross Blue Shield Reform Commission was organized in 1992 to recommend for review by the board of directors of Blue Cross Blue Shield of North Dakota a plan to address elements of reform to the health care system in the state necessary to ensure universal, portable, and affordable health care coverage for every North Dakotan. The commission is composed of 20 members representing employers, employees, subscribers, the uninsured, and the medical community. The commission made 16 recommendations on health care reform. Nine recommendations were suggestions for Blue Cross Blue Shield to consider, and seven of the recommendations suggested state action for health care reform. The recommendations suggesting state action were:

1. Adopt an insurance reform/underwriting model including an endorsement of the allocation method for the distribution of insurance risk.
2. Repeal the "sunset" language in the tort reform law and retain the provisions of the tort reform law. Undertake further efforts on liability reform which have a positive effect on health care costs but which provide needed legal avenues for damaged individuals.
3. Retain the certificate of need program conditional upon the expansion and strengthening of the authority of the current system. Assign the program as a responsibility of the proposed State Health Commission. If, however, the certificate of need program is not amended, eliminate the program. Blue Cross Blue Shield of North Dakota and other third-party payers should continue efforts to develop private sector controls for facility and equipment expenditures through reimbursement mechanisms.
4. Support legislation to allow Blue Cross Blue Shield to terminate its participating contract with any given health care provider, making the health care provider nonreimbursable, when utilization patterns of the health care provider are identified as being outside of practice norms and a program of intervention has not resulted in a correction of the pattern.
5. Support a legislative effort directed at placing a health education and awareness program in the public schools.
6. Support universal access for North Dakotans to a basic health plan including access to a broad

array of primary care and specialty care services, and support the "gatekeeper" concept by providing benefit levels will be highest when care is initiated through a primary care provider; provide for an array of copayments and cost-sharing features in the benefit design to support accessing preventive and primary care services, limit the plan to a basic core of services with remaining services being available through a supplemental contract, and develop a program to reward the adoption of healthy lifestyle choices; and allow for the self-auditing of provider billings with an incentive for error detection.

7. Provide for payment of all medical expenses through the standardized basic health plan coverage. All citizens would have this coverage and all health care services would be covered including those currently provided by programs such as workers' compensation or automobile insurance coverage.

### **Bill Drafts Considered**

The committee reviewed several bill drafts addressing the issues of access to health care, health care provider self-referrals, and universal health insurance.

### **State-Subsidized Health Insurance Coverage**

The committee considered three bill drafts patterned after Senate Bill No. 2341 (1991), which would have authorized the Department of Human Services to contract with insurers to provide health insurance coverage. One bill draft, based on the engrossed version of Senate Bill No. 2341, would have authorized the Department of Human Services to contract with an insurance company, a nonprofit health service corporation, or health maintenance organization for a coverage plan that would enable the department to provide a subsidized nongroup health insurance policy, health service contract, or evidence of coverage for certain persons under the age of 18 not eligible for medical assistance or Medicare and for whom health insurance was not provided through an employer-sponsored plan. Premiums, deductibles, and coinsurance under the plan would have been payable on a sliding scale based on the family's income. Reimbursements to health care providers would be paid according to the payment structure established for medical assistance. The second bill draft, also based on the engrossed version of Senate Bill No. 2341, would not have limited coverage under the plan to persons under 18 years of age. The benefits provided would have been the same.

The third bill draft, based on 1991 Senate Bill No. 2341, as introduced, would have allowed the Department of Human Services to contract with insurers to provide health insurance coverage for dependents who are not eligible for medical assistance, who do not receive Medicare, and whose family income does not exceed 200 percent of the federal poverty level. The bill draft contained provisions for payment of premiums, deductibles, and coinsurance under a sliding scale based on family incomes. After reviewing the bill drafts, the committee chose to concentrate its efforts on the bill draft to provide

health services to children and pregnant women. The committee determined this approach would provide health care to segments of the population who need it most.

### **Health Plan for Children and Pregnant Women**

The committee considered a bill draft that established a health plan for children and pregnant women and established a state health services fund. The health plan would provide specified health services for children from birth through the age of 18 and for pregnant women. The Department of Human Services or a private entity under contract with the department would administer the plan. The plan encouraged the use of mid-level practitioners and cost-containment measures. The state health services fund would be used to administer the health plan. The Department of Human Services would make payment to eligible providers at rates and under conditions set forth in rules adopted by the department. Reimbursement for health services would be at the rates established for medical assistance. Participation by an eligible person would be allowed pursuant to a sliding fee scale based on the income of the eligible person if that person is not eligible for medical assistance and has no other health insurance coverage. The department would also make payment pursuant to a sliding scale of coinsurance and deductible amounts for an eligible person who is otherwise covered under a group or individual health insurance contract. An eligible person must pay an enrollment fee of \$50; however, the enrollment fee may not exceed \$150 per family. An annual reapplication must be made to maintain eligibility and the enrollment fee must be paid upon reapplication. A taxpayer could contribute to the state health services fund by way of an optional contribution as designated on an individual's income tax return. The bill draft also required the Department of Human Services and the Department of Health and Consolidated Laboratories to coordinate related services to maximize the use of services and the funding available for those services. The Department of Human Services was also required to apply for the appropriate waivers to use federal Medicaid funds to administer the plan and to pay for health services. The bill draft contained an \$11 million appropriation.

Testimony indicated that it is widely believed that if there is not adequate funding available to provide health insurance to all citizens of the state, efforts would best be focused on children and pregnant women as they are the segments of the population which most frequently are without health insurance coverage. Testimony also indicated that it has been documented that one can get the most value for the dollar in children's preventive and pregnant women's prenatal health care. By focusing on preventive care programs, costs for catastrophic care should ultimately be reduced. Testimony indicated that the Medicaid program is not being used to the extent it is available. The Medicaid system includes children and pregnant women up to 133 percent of the poverty level. To expand the Medicaid program administered by the state to include children and pregnant women up to 185 percent of the poverty level would take an addi-

tional general fund appropriation of approximately \$22.9 million per biennium. Depending on the participation in the program and the income level of those covered, the implementation of the program proposed by the bill draft was estimated to require anywhere from \$33 million to \$79 million in general fund dollars for the biennium. The committee determined that an \$11 million appropriation be provided for the administration of this program. It would be the responsibility of the department to establish the sliding fee scales and the amount of payments to be made for copayment and deductible amounts based on the availability of general fund moneys.

### **Health Care Provider Self-Referrals**

The committee considered a bill draft that prohibited certain financial arrangements between providers of health care and providers of health care services and provided for pretrial screening of medical malpractice cases. The bill draft specified the types of arrangements that would be prohibited between a health care provider and a provider of designated health services. The health care providers included in the bill draft were providers licensed by the Board of Podiatric Medicine, Board of Chiropractic Examiners, Board of Nursing, Board of Optometry, Board of Pharmacy, Board of Medical Examiners, and Board of Dental Examiners. The bill draft required disclosure of certain investment interests by a provider and included a provision to establish a medical malpractice screening panel.

Testimony reminded the committee that a medical claims review panel enacted by the Legislative Assembly in 1977 was ultimately repealed. A district judge had declared the panel to be unconstitutional. It was also noted that insurers are opposed to screening panels as review by a screening panel increases the costs of defending an action. The committee removed the provisions on pretrial screening for medical malpractice from the bill draft.

Additional testimony on the bill draft indicated that the practice of a health care provider referring a patient to a health care services provider in which that health care provider has a financial interest serves to increase the costs of health care. Although it is not known to what extent health care provider self-referral is a problem in North Dakota, the committee determined that legislation may be enacted as a proactive measure rather than a reactive measure.

### **Unified Health Insurance Coverage Plan**

The committee considered a bill draft that would have provided health insurance coverage to all persons eligible for medical assistance. The Department of Human Services or a private entity under contract with the department would have administered the coverage. Any person eligible for a federal health insurance credit would have been allowed to purchase health insurance coverage through the state unified health insurance coverage plan. The committee did not recommend this bill draft because it supported the bill draft to provide health services to children and pregnant women as the best vehicle to establish a health care program for uninsured residents of the state.

## **Health Task Force Duties**

The committee considered a bill draft that required the North Dakota Health Task Force to develop a prospective all payers ratesetting system to control costs and redistribute dollars toward improved access to health services and to develop a mechanism to provide universal health insurance coverage for the people of North Dakota. Testimony provided by the task force indicated that the Robert Wood Johnson Foundation preferred that the applicants for grants from the foundation have legislative backing for their efforts. The committee, in response to that testimony, determined that the bill draft would lend support to the activities of the task force.

## **Health Task Force Support**

The committee considered a resolution draft that supported the efforts of the North Dakota Health Task Force in addressing health care issues. This resolution draft was prepared in response to requests by the North Dakota Health Task Force for legislative support for its activities.

## **Recommendations**

The committee recommends Senate Bill No. 2038 to establish a program to provide health services to children through the age of 18 years and pregnant women. The bill provides an \$11 million appropriation to establish and implement the program.

The committee recommends Senate Bill No. 2039 to prohibit certain financial arrangements between health care providers and health care service providers.

The committee recommends House Bill No. 1038 to require the Health Task Force to develop an all payers ratesetting system or other health care financing system and to develop a mechanism to provide health care for all citizens of the state.

The committee recommends House Concurrent Resolution No. 3001 to support the efforts of the North Dakota Health Task Force in developing an all payers ratesetting system or other health care financing system and developing a mechanism to provide health care for all citizens of the state.

## **HOSPITAL CAPITAL STUDY**

### **Background**

The hospital capital study was requested to determine the availability and cost of capital to North Dakota hospitals and the role of the Bank of North Dakota in assuring the availability of necessary capital at the lowest possible cost.

The study was intended to address the problems faced by North Dakota hospitals in obtaining capital in national bond markets due to the small size of the hospitals and their lack of credit guarantees. North Dakota hospitals have been unable to obtain low cost capital.

### **Capital Sources**

#### **Bonds**

After a hospital has been approved to undertake a building or acquisition project, it attempts to acquire the financing needed for the project. Financial insti-

tutions will not insure bonds for facilities with fewer than 85 beds and most North Dakota hospitals have fewer than that number of beds. If a small facility is able to obtain a letter of credit from a financial institution guaranteeing the financial security of the facility, the bonds may be issued. However, the cost to the hospital is increased due to the cost of obtaining the letter of credit. The reason the bond market is so appealing to these facilities is the tax-exempt nature of the bonds for nonprofit facilities.

#### **MIDA Bonds**

Another possible source of funding for hospitals is through municipal industrial development revenue bonds. A municipality may enter into a loan agreement with a hospital which provides that proceeds derived from the issuance of revenue bonds be used to pay the costs of the project undertaken by the hospital and that the hospital be put under an obligation to repay the loan. These bonds are also tax exempt.

#### **Loans**

Another available source of capital is funding through local lenders. The concern at this level is generally the cost of obtaining the capital, not whether a hospital can obtain capital. The interest rates on loans obtained through lending institutions is approximately two to three percent higher than financing received through bond issues. There are no loan programs in this state which are designed to provide capital at a reduced cost to hospitals.

#### **Loan Funds in Selected States**

The committee reviewed loan funds in other states. North Dakota hospitals are unique because all of them, except for the State Hospital, the University of North Dakota Rehabilitation Hospital, and a newly purchased hospital in Fargo, are nonprofit hospitals that are not owned by governmental entities. Other states do not necessarily parallel this scenario.

#### **West Virginia**

West Virginia has a hospital financing authority that is authorized to lend money to hospitals for acquisition, construction, improvement, or alteration of hospital facilities. The various fees charged by the authority for its services are deposited into the authority's fund. The authority also charges an annual fee that varies from year to year. Because the bonds issued are hospital revenue bonds, they are tax exempt and more appealing to borrowers.

#### **Wisconsin**

Wisconsin has a health and educational facilities authority, established in 1989, that is authorized to guarantee loans for nonprofit rural hospitals with no more than 100 beds or to cooperatives consisting of one or more rural hospitals, each with no more than 100 beds. The moneys in the rural hospital loan fund are used for guaranteeing loans. Wisconsin law contains explicit terms for the guarantee of loans including how the loan proceeds are to be used, minimum and maximum amounts of loans subject to

guarantee, proof of local community support for a project, and the amount of service charge due the authority for guaranteeing a loan. In addition, the statute defines the amount of unpaid principal the authority will pay to a participating lender upon default of a guaranteed loan.

### **Testimony and Committee Considerations**

Testimony on the hospital capital study showed many North Dakota hospitals cannot obtain the low rates from the national bond markets because of their small size and their lack of credit enhancement. Testimony revealed that the Bank of North Dakota has taken substantial losses as the result of funding small community hospitals that subsequently close. The Bank of North Dakota cannot make direct loans to these hospitals, but it can participate in loans if local financial institutions act as the lead lender. Because of problems small hospitals have with cash flow and debt repayment, it is difficult for them to obtain loans. Direct loans by the Bank of North Dakota to hospitals would cost in excess of \$2 million per year. Additional testimony indicated that the Bank of North Dakota and the North Dakota Hospital Association had been working together to determine what could be done to help small hospitals in North Dakota receive lower cost financing.

### **Conclusion**

Testimony revealed that the issue is being addressed through other organizations and it was not anticipated that any legislation would be needed. The committee makes no recommendation as a result of this study.

## **REPORTS ON THE BASIC HEALTH POLICY**

House Bill No. 1042 (1991) required the Commissioner of Insurance to report on the progress of implementing a basic health policy to a Legislative Council interim committee. The basic health policy is available to individuals or to employers with fewer than 25 employees who have not had health insurance for at least 12 months prior to applying for coverage. The policy is to be offered without mandated coverage for the care and treatment of substance abuse, for the care and treatment of mental disorders, for mammogram examinations, and for surgical and non-surgical treatment of temporomandibular joint disorder and craniomandibular disorder.

The Commissioner of Insurance reported that Blue Cross Blue Shield was the only carrier that had expressed an interest in writing a basic health policy.

The Blue Cross Blue Shield policy is called "Basic Choice." Two individual plans were developed. Plan A covers 100 percent of the usual, customary, and reasonable rates charged for health care for a monthly premium of approximately \$244. Plan B covers 50 percent of the usual, customary, and reasonable rates charged for health care for \$130 per month. The lifetime benefit per member is limited to \$500,000. There is a \$200 deductible per inpatient admission and there is an 80-20 copayment with a \$1,000 stop payment. There are also other caps and limits on services implemented throughout the plan. Marketing of the plan was to begin in March 1992. Neither plan was approved because there was no guarantee that a consumer would be held harmless for the remainder of the bill under Plan B.

The plan ultimately approved provides for a reduction in premiums of about eight to 10 percent from what a person would pay with a typical insurance policy. As of the middle of October 1992, only three policies had been purchased.

# HIGHER EDUCATION COMMITTEE

North Dakota Century Code Section 15-10-14.2 provides that the State Board of Higher Education meet with the Legislative Council and the Governor in each odd-numbered year to discuss ideas and issues regarding the future of the system of higher education in North Dakota. In each even-numbered year, the Board of Higher Education is to present a seven-year comprehensive plan for the system of higher education in North Dakota. The seven-year plan must contain the rationale the board used in determining its priorities and methods the board intends to use to address the issues identified. In addition, the board is to report to the Legislative Assembly at the organizational session on how the funds proposed in the budget for the upcoming biennium will be used to implement the seven-year plan.

The Legislative Council delegated its responsibilities under North Dakota Century Code Section 15-10-14.2 to the Higher Education Committee. Committee members were Representatives John Schneider (Chairman), Ronald A. Anderson, and Richard Kloubec; Senators William S. Heigaard and Gary J. Nelson; and Governor George A. Sinner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## BACKGROUND

The North Dakota University System consists of 11 institutions under the control of the Board of Higher Education. The system served 34,054 students (headcount enrollment) during the 1991-92 academic year. The total legislative appropriation for the North Dakota University System for the 1991-93 biennium is \$454.8 million. Of that total, \$263.7 million is from the general fund.

## BOARD OF HIGHER EDUCATION INITIATIVES

The committee reviewed the following major initiatives implemented by the Board of Higher Education in accordance with the seven-year plan's goals:

1. Total quality improvement management system. The system involves campus personnel in defining standards of quality directly related to their duties and responsibilities, in the measurement and observation of those standards, and in the development of plans to achieve goals and desired outcomes. The North Dakota University System has implemented the total quality management system for its administrative structure and is in the process of training all administrative staff in total quality management principles. The university system is currently in the process of designing the total quality management system for the academic structure of North Dakota higher education and plans to implement the system within three years.
2. High school preparation standards. The Board of Higher Education, in conjunction with North Dakota public schools, is developing standards that high school students must meet in order to

be admitted to the University of North Dakota, North Dakota State University, Minot State University, and Valley City State University. The admission requirements which will begin for the 1993-94 academic year are:

|                     |         |
|---------------------|---------|
| English             | 4 units |
| Math                | 3 units |
| Social studies      | 3 units |
| Laboratory sciences | 3 units |

3. One-university system with a chancellor. Under the chancellor system, the institution presidents are no longer directly responsible to the Board of Higher Education but are responsible to the chancellor and the chancellor is directly responsible to the Board of Higher Education. The one-university system with a chancellor is the current operating structure of the North Dakota University System.
4. Uniform semester calendar. All campuses in the university system base their academic programs on the semester calendar. For the 1992-93 academic year, all campuses are on the semester calendar and all campuses began classes the same week.
5. Interactive television network. The network connects all 11 campuses of the university system and makes it possible to offer courses previously available only at certain campuses to any campus in the system. All campuses of the university system are connected via the network.
6. Systemwide Library Automation Network. The On-line Dakota Information Network (ODIN) is operating as part of the Higher Education Computer Network. The network currently connects eight of the 11 higher education institution libraries in the state as well as other major libraries including the State Library and the Grand Forks and Fargo public libraries. The network also provides access to Minnesota and South Dakota library holdings.
7. Telephone computer-assisted registration. This registration system allows students to register for classes over the telephone. North Dakota State University and the University of North Dakota are developing touch tone registration pilot projects for the fall of 1992. Bismarck State College and Minot State University are in the process of developing touch tone registration systems.
8. Enrollment/funding limits. The 1991-93 higher education budget requests for the institutions listed were based on the following enrollments:
  - University of North Dakota - 9,600 FTE students
  - North Dakota State University - 7,500 to 8,000 FTE students
  - Minot State University - 3,300 FTE students

However, the 1993-95 higher education institution budget requests, approved by the Board of

Higher Education, are not based on enrollment or funding limits.

### SEVEN-YEAR PLAN

The Higher Education Committee held two meetings with the Board of Higher Education during the 1991-93 biennium. The final draft of the seven-year plan was presented to the committee on June 29, 1992. Presented below is a summary of the final draft of the Higher Education Seven-Year Plan titled "Action Agenda for the Nineties." The three fundamental goals of the seven-year plan are:

1. That North Dakota become a model high quality education state with a coordinated and collaborative education system for all levels from kindergarten through graduate programs.
2. That higher education in North Dakota continue and further develop as one of the state's major growth industries.
3. That higher education in North Dakota be a major global education and economic development partner with both private and public sectors of the state.

The five major priority areas of the seven-year plan are:

1. Academic quality.
2. True university system.
3. Economic development.
4. Elementary and secondary education collaboration.
5. Administrative streamlining.

The plan includes 39 specific agenda items to be completed by the university system in accordance with the plan. Major agenda items and goals of the seven-year plan include:

1. Improve the transferability of equivalent courses among the campuses.
2. Develop a comprehensive program to assess student achievement of learning goals for each campus.
3. Develop a "coordinating institution" concept for administering systemwide higher education programs. Under this model, one institution will administer a particular program on behalf of the whole system. The Board of Higher Education has designated the following institutions as coordinating institutions for the listed programs:
  - University of North Dakota - Interactive Video Network
  - North Dakota State University - Economic development
  - North Dakota State College of Science - Customized training
4. Implement a personnel classification system.
5. Develop new computerized financial systems to accommodate streamlined delivery of administrative support services.
6. Establish master campus development plans.
7. Develop a planning and priority process for new construction and major renovation projects in conjunction with campus master plans.
8. Establish incentives and agreements for campuses to facilitate collocation and sharing of industry and university research and teaching

laboratories and establish public and private sector industry specific advisory groups for reviewing research and teaching needs.

9. Establish a joint research center between North Dakota State University and the University of North Dakota. The center will conduct research that involves the expertise of both universities such as in the area of biotechnology. The center will enable the universities to conduct joint research projects with all federal agencies.
10. Develop a statewide electronic data base and information service for economic development assistance for North Dakota businesses.
11. Develop programs to ensure a smooth transition from high school to college courses.
12. Conduct an assessment of continuing education needs of North Dakota teachers for the 21st century.
13. Design cultural diversity plans on each campus.
14. Establish educational, cultural, or scientific exchange programs with international campuses.
15. Develop methods of sharing resources systemwide and standardizing administrative procedures to more efficiently administer the university system.

More detailed information regarding the seven-year plan may be found in the Board of Higher Education's "Action Agenda for the Nineties: North Dakota Higher Education's Seven-Year Plan."

### OTHER COMMITTEE CONSIDERATIONS

The committee reviewed an analysis of 1991-92 salary increases provided to higher education faculty and staff and heard reports and testimony on the Industrial Agriculture and Communications Center construction project at North Dakota State University.

### COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

After its review of the seven-year plan, the committee made the following observations and recommendations:

1. As the plan progresses it needs to become more specific.
2. North Dakota higher education's open enrollment policy must be continued to ensure access to all North Dakota students.
3. Duplication of programs must continue to be monitored among the institutions.
4. Opportunities made available by the use of technology in teaching must be capitalized on.
5. Options should be available to the Legislative Assembly to address higher education growth between legislative sessions. A contingent appropriation policy may be the appropriate method to plan for the possibility of higher education institutions collecting unanticipated funds.
6. The current structure of the Higher Education Committee should continue in future bienniums in order to maintain a consistent dialogue between the Board of Higher Education, the Legislative Assembly, and the Governor.

# HUMAN SERVICES FACILITIES ADVISORY COMMITTEE

Senator Corliss Mushik, Legislative Council Chairman, at the request of the Budget Section, created a special committee of the Legislative Council to advise the Department of Human Services on space needs of the Southeast Human Service Center in Fargo.

Committee members were Senators Harvey D. Tallackson (Chairman) and Russell T. Thane and Representatives Judy L. DeMers, Cathy Rydell, Scott B. Stofferahn, Kenneth N. Thompson, and Janet Wentz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## BACKGROUND

In 1982 the Department of Human Services entered into a 30-year lease with the Red River Human Services Foundation for office space in the 15 Broadway building in Fargo to house the Southeast Human Service Center. Under the terms of the lease the Southeast Human Service Center paid approximately \$33,000 per month for 42,000 square feet. During the 10 years the Southeast Human Service Center occupied the building, it became increasingly dissatisfied with the building's condition and conflicts arose between the Southeast Human Service Center and the Red River Human Services Foundation.

The appropriation for the Department of Human Services, Senate Bill No. 2002, did not provide sufficient funding for the Southeast Human Service Center's 1991-93 rental payments. The 1991 Legislative Assembly also approved House Bill No. 1511 that provided a contingent appropriation of \$2,475,000 to the Department of Human Services from the proceeds of loan notes issued by the State Industrial Commission to purchase an existing building or construct a new facility to house the Southeast Human Service Center. The bill provided that the loan notes could be issued only if the Department of Human Services was unable to negotiate a new lease by November 1, 1991, with the Red River Human Services Foundation for the 15 Broadway building.

## FINDINGS

The committee received reports from the Department of Human Services on departmental actions

relating to the building issue since the 1991 Legislative Assembly adjourned. The reports indicated that because sufficient funding for 1991-93 rental payments for the lease with the Red River Human Services Foundation was not provided by the 1991 Legislative Assembly, the department canceled its 30-year lease with the Red River Human Services Foundation on April 1, 1991. The Department of Human Services asked the Red River Human Services Foundation to provide a verified detailed accounting report on the operations of the 15 Broadway building as required in House Bill No. 1511 for lease negotiation purposes. Because the report requested was not provided to the department, lease negotiations never began and therefore, after November 1, 1991, the Southeast Human Service Center formed a building committee to review location alternatives for the center. After reviewing more than 40 proposals and after considering location, appropriateness for treatment services, and costs, the building committee reduced the number of potential proposals to four and subsequently concluded that construction of a new Southeast Human Service Center building near 26th Street and Ninth Avenue South in Fargo would be the most effective use of tax dollars and would provide the best services to the center's clients. The building committee was in the process of hiring an architect to develop more detailed cost estimates for a new building when the Legislative Council's Human Services Facilities Advisory Committee was formed.

The committee reviewed the following four proposals under consideration by the Southeast Human Service Center building committee:

1. Purchase and remodel the 15 Broadway building.
2. Purchase and remodel the Sweeney Brothers property.
3. Purchase and remodel a portion of the Village Mall.
4. Construct a new building near 26th Street and Ninth Avenue South.

The committee reviewed the following cost comparisons for the final four potential location proposals:

## ESTIMATED PROJECT COST COMPARISONS

|                             | <b>15<br/>Broadway</b> | <b>Sweeney<br/>Brothers</b> | <b>Village<br/>Mall</b> | <b>New<br/>Construction</b> |
|-----------------------------|------------------------|-----------------------------|-------------------------|-----------------------------|
| Square feet                 | 57,616                 | 50,000                      | 50,000                  | 50,000                      |
| Architect fees              | \$ 100,000             | \$ 100,000                  | \$ 100,000              | \$ 100,000                  |
| Acquisition cost            | 300,000                | 1,100,000                   | 1,500,000               | 168,000                     |
| New building cost           | 0                      | 0                           | 0                       | 2,150,000                   |
| Remodeling cost             | 2,115,450              | 1,251,800                   | 900,000                 | 0                           |
| Other related project costs | <u>69,560</u>          | <u>29,328</u>               | <u>29,328</u>           | <u>29,328</u>               |
| Total project costs         | \$2,585,010            | \$2,481,128                 | \$2,529,328             | \$2,447,328                 |

|   | <b>15<br/>Broadway</b> | <b>Sweeney<br/>Brothers</b> | <b>Village<br/>Mall</b> | <b>New<br/>Construction</b> |
|---|------------------------|-----------------------------|-------------------------|-----------------------------|
| 1991-93 legislative appropriation for project | \$2,475,000            | \$2,475,000                 | \$2,475,000             | \$2,475,000                 |
| Estimated variance (over) under budget        | <u>\$ (110,010)</u>    | <u>\$ (6,128)</u>           | <u>\$ (54,328)</u>      | <u>\$ 27,672</u>            |

**ESTIMATED BIENNIAL OPERATING COST COMPARISONS**

|   | <b>15<br/>Broadway</b> | <b>Sweeney<br/>Brothers</b> | <b>Village<br/>Mall</b> | <b>New<br/>Construction</b> |
|---|------------------------|-----------------------------|-------------------------|-----------------------------|
| Operating \$3/square foot               | \$ 345,696             | \$ 300,000                  | \$ 300,000              | \$ 300,000                  |
| Parking                                 | <u>76,000</u>          | <u>0</u>                    | <u>0</u>                | <u>0</u>                    |
| Total estimated biennial operating cost | <u>\$ 421,696</u>      | <u>\$ 300,000</u>           | <u>\$ 300,000</u>       | <u>\$ 300,000</u>           |

The committee received testimony from the banking group that holds the bonds on the 15 Broadway building regarding the cost estimates. It was the banking groups contention that new construction would cost more than estimated and that the 15 Broadway building could be remodeled for less than estimated. In addition, the committee learned that the

\$100,000 contribution from the city of Fargo for remodeling the 15 Broadway building is not reflected in the cost estimates.

The committee considered the major positive and negative aspects of the four location options as follows:

| <b>Building Description</b>                              | <b>Positive Aspects</b>  | <b>Negative Aspects</b>   |
|--|--|---|
| 15 Broadway  | <ol style="list-style-type: none"> <li>1. Sound structure</li> <li>2. Developmental work activity center could continue its downtown contracts easily</li> <li>3. Potential for expansion</li> <li>4. The center could take possession immediately</li> </ol>  | <ol style="list-style-type: none"> <li>1. Ongoing parking problems</li> <li>2. Potential for asbestos removal costs</li> <li>3. Programs would be located on more than one level</li> <li>4. The center would not be totally handicapped accessible</li> <li>5. Less program and operational efficiency than other locations</li> <li>6. Expansion of extended care program is limited by space availability</li> </ol> |
| New construction near 26th Street and Ninth Avenue South | <ol style="list-style-type: none"> <li>1. Ample parking</li> <li>2. The building would be designed to the center's specifications</li> <li>3. Room for expansion</li> <li>4. Near major highways for out-of-town clients</li> <li>5. Environmentally safe</li> <li>6. Operationally and programmatically efficient</li> <li>7. Totally handicapped accessible</li> </ol> | <ol style="list-style-type: none"> <li>1. Change in location would force some clients who now walk for services to use buses</li> <li>2. Additional time would be needed to construct a building</li> <li>3. Operating expense funding would be taken out of the building budget</li> </ol>   |
| The Village Mall   | <ol style="list-style-type: none"> <li>1. Quick relocation time</li> <li>2. Sound structure</li> <li>3. Ample parking</li> <li>4. Room for expansion</li> <li>5. Located on bus route</li> <li>6. Handicapped accessible</li> </ol>  | <ol style="list-style-type: none"> <li>1. Because of the one-floor layout, clients might have difficulty finding programs</li> <li>2. Location has traffic congestion at times</li> <li>3. Minimum natural lighting</li> </ol>  |



| <b>Building Description</b> | <b>Positive Aspects</b>   | <b>Negative Aspects</b>   |
|-----------------------------|---|---|
| Sweeney Brothers property   | <ol style="list-style-type: none"> <li>1. Ample parking</li> <li>2. Room for expansion</li> <li>3. Quick relocation time</li> <li>4. Handicapped accessible</li> <li>5. Program expansion possibilities</li> <li>6. Located on bus route and some clients could continue to walk</li> </ol> | <ol style="list-style-type: none"> <li>1. Older brick building would be remodeled and expanded</li> <li>2. Traffic congestion possible</li> <li>3. Traffic noise</li> <li>4. Might be environmentally unsafe if hydrocarbons are present</li> </ol> |

The committee received a report from the Industrial Commission regarding project financing of \$2,475,000. The committee learned that the project would be financed for a period of 20 years with an interest rate of approximately 6.5 percent per annum.

The committee received testimony from the banking group that holds the bonds on the 15 Broadway building. The banking group presented an alternative cost estimate for remodeling the 15 Broadway building which estimated the cost to be \$1.6 million, which is \$500,000 less than the human service center's estimate of \$2.1 million. The committee learned that the \$500,000 difference is attributable to additional items being included in the Southeast Human Service Center's estimates including \$400,000 for remodeling the basement of the building, \$18,500 for installing a standpipe, \$28,000 for installing a fire pump, \$41,000 for toilet modifications, and \$26,400 of additional electrical work.

The committee received information from the Southeast Human Service Center's architect which indicated that a two- to three-story light steel construction building could be designed and built to meet the needs and specifications of the Southeast Human Service Center within the appropriation provided by the 1991 Legislative Assembly.

The committee toured the developmental work

activity center, 2 Broadway, portions of the Southeast Human Service Center building at 15 Broadway, the Sweeney Brothers property, the new construction site near 26th Street and Ninth Avenue South, and the space available in the Village Mall complex.

The committee received testimony from clients and staff of the Southeast Human Service Center indicating the need for a new building for the Southeast Human Service Center.

### **CONCLUSION**

The committee informed the Legislative Council chairman that the Department of Human Services was implementing the provisions of 1991 House Bill No. 1511 as intended by the 52nd Legislative Assembly and that the committee supports the Southeast Human Service Center's building committee's space needs study, and requested the Legislative Council chairman to encourage the Department of Human Services, in conjunction with the Industrial Commission, to continue the process to its end.

Chairman Mushik informed the Industrial Commission and the Department of Human Services of the committee's support for the Southeast Human Service Center's building committee's space needs study and its recommendation to continue the process to its conclusion.

# INDUSTRY, BUSINESS AND LABOR COMMITTEE

The Industry, Business and Labor Committee was assigned five studies. Section 49 of Senate Bill No. 2058 directed a study of the collocation of the Bank of North Dakota and the Department of Economic Development and Finance and directed the committee to make recommendations relating to methods for accomplishing the collocation, including the timeframe, funding, and other elements pertinent to the collocation. Section 76 of Senate Bill No. 2206 directed a study of the feasibility and desirability of consolidating the Workers Compensation Bureau with Job Service North Dakota and the amount required to be appropriated from the general fund to implement any consolidation. Senate Concurrent Resolution No. 4036 directed a study of the structure, organization or consolidation with Job Service North Dakota, and administration of the Workers Compensation Bureau, including the qualifications of the bureau's claims analysts and rehabilitation staff. Senate Concurrent Resolution No. 4051 directed a study of the feasibility of providing basic statewide health and work-related accident insurance to all North Dakota workers and their dependents. Senate Concurrent Resolution No. 4067 directed a study of workers' compensation, insurance, and contract issues that may arise when an employer or an insurer requires subrogation, additional insured coverage, or indemnification of an employee or contractor.

Committee members were Senators Jayson Graba (Chairman), Joe Keller, Karen K. Krebsbach, Dale Marks, Jim Maxson, Duane Mutch, David O'Connell, Joseph A. Satrom, Larry W. Schoenwald, and Ken Solberg and Representatives LeRoy G. Bernstein, Rick Clayburgh, John Dorso, June Y. Enget, Moine R. Gates, William E. Gorder, Lee Kaldor, John Mahoney, Bob Martinson, Ron Nichols, Bill Oban, John Schneider, Al Soukup, Mike Timm, and Joseph R. Whalen.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## STUDY OF THE COLLOCATION OF THE BANK OF NORTH DAKOTA AND THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND FINANCE

### Background

Senate Bill No. 2058 (1991) as introduced contained a provision requiring the Industrial Commission and the president of the Bank of North Dakota to develop and maintain a close working relationship with the coordinator of economic development to complement the purpose and activities of the Department of Economic Development and Finance. That provision was replaced with a provision requiring the Bank of North Dakota and the Department of Economic Development and Finance to collocate by July 1, 1992. Testimony indicated that the timeframe for the collocation was probably unrealistic and that cost factors must be considered. As a result, the requirement for collocation was replaced with a provision requiring a Legislative Council study on collocation.

### History

#### North Dakota 2000 Committee

In a report prepared by the North Dakota 2000 Committee in March 1990, the committee outlined its strategies for North Dakota. Among those strategies was a strategy to develop a new entity known as the "Development Bank of North Dakota." The report indicated that the Development Bank of North Dakota would be the principal institution responsible for increasing the state's competitive position with other states and for supporting economic growth in North Dakota. The committee recommended that the Development Bank perform the duties of the Bank of North Dakota and assume the functions of the Economic Development Commission. The Development Bank of North Dakota was to be the primary agent for coordinating and achieving the state's economic development goals and for developing effective financial delivery systems for the state.

#### Jobs Development Commission

The Legislative Council's 1989-90 interim Jobs Development Commission was assigned the responsibility of studying methods and coordinating efforts to initiate and sustain state economic development and to stimulate the creation of new employment opportunities for the citizens of North Dakota. During that study, the commission received recommendations from the North Dakota 2000 Committee. Among the recommendations was the strategy to create the Development Bank of North Dakota. Testimony on the recommendations indicated that there was a need for a unique tie to be developed between the Bank of North Dakota and economic development, that the Economic Development Commission should be disbanded and be restructured as the Department of Economic Development and Finance, and that a coordinator of economic development appointed by the Governor and part of the Governor's staff should act as the coordinator between the president of the Bank of North Dakota and the director of the Department of Economic Development and Finance.

The commission then received recommendations by the North Dakota Rural Development Academy team and the Governor's Committee of 34 which did not include the creation of the Development Bank of North Dakota. As a result, the commission decided not to pursue consideration of the development bank. The commission recommended Senate Bill No. 2058, which proposed the use of the profits of the Bank of North Dakota to provide a comprehensive economic development program.

#### Department of Economic Development and Finance

The Department of Economic Development and Finance occupies two floors of a building on East Bismarck Expressway, the square footage of which is 8,400 to 8,500 square feet. The amount of the rent per square foot is between \$8.66 and \$9. The department has looked for a building to lease with approximately 10,000 square feet; however, it has been unable to locate such a building.

## **Bank of North Dakota**

The Bank of North Dakota occupies two buildings in downtown Bismarck. The main bank building which consists of four floors and a basement, contains about 26,000 square feet. The second building contains 22,728 square feet. The Bank of North Dakota's budget for the 1991-93 biennium includes \$400,000 for capital improvements. Testimony received by the Appropriations Committees during the 1991 legislative session indicated that the budgeted amount is for capital improvements to the main building, including repainting, air-conditioning work, and upgrading of fire-rated storage.

## **Testimony and Committee Considerations**

Testimony received by the committee indicated that one of the benefits of collocation would be "one-stop shopping." It was also stated, however, that rarely, if ever, are the Bank of North Dakota and the Department of Economic Development and Finance the only two entities involved in economic development processes. While collocation would be perceived as being more efficient, there would still be other agencies and financiers who would have to be contacted in order to provide economic development services. It was suggested that perhaps it would be more beneficial to collocate the Department of Economic Development and Finance with other economic development offices rather than with the Bank of North Dakota.

The space needs for each agency were reviewed. It was acknowledged that the current facilities housing the Department of Economic Development and Finance would not be able to accommodate the Bank of North Dakota. In reviewing whether the Department of Economic Development and Finance could be relocated at the Bank of North Dakota, it was determined that the current space available at the Bank was insufficient for such a relocation. It may, however, be possible to add a second floor to the Student Loan Division at the Bank of North Dakota or to purchase space in another building in that area of downtown Bismarck. The estimated cost of building additional facilities at the Bank of North Dakota is \$2.5 million.

## **Bill Drafts Considered**

The committee reviewed two bill drafts on the collocation of the Bank of North Dakota and the Department of Economic Development and Finance.

## **Collocation of Department of Economic Development and Finance and the Bank of North Dakota**

The committee reviewed a bill draft that would have required the Department of Economic Development and Finance and the Bank of North Dakota to collocate. The committee received information that suggested that relocating the department to the Bank would be expensive and requiring the collocation of the two agencies would not necessarily lead to the desired result of "one-stop shopping." While the two agencies appear to have sufficient communications to accomplish economic development goals, it was suggested that it is not good enough to simply have sufficient communications between the two agencies. It was suggested that if actually collocating the two

agencies could not be accomplished, perhaps merging the economic development functions of the two agencies would be the route to go.

## **Collocation of Economic Development Functions**

The committee reviewed a bill draft that would have required the economic development functions of the Bank of North Dakota to be collocated with the Department of Economic Development and Finance. The Bank and the department are considering the possibility of placing a Bank employee whose primary responsibilities are in economic development at the department. It was suggested that collocating these functions could be done without a bill draft. Because there are several people at the Bank of North Dakota whose duties are not clearly defined as being either economic development duties or other duties, it was suggested that a complete collocation of economic development functions from the Bank to the department as required by the bill draft would be more difficult to accomplish than just moving one or two people from the Bank to the department. The committee considered requiring the personnel at the Bank who deal with economic development be relocated to the department by July 1, 1993. The committee determined it would be difficult to determine the personnel who would need to be located at the department. In addition, the two agencies indicated that collocation of some economic development functions is underway.

## **Conclusion**

The committee makes no recommendation concerning the collocation of the Department of Economic Development and Finance and the Bank of North Dakota. The committee determined that collocation of the two agencies was not necessary, would not produce the results desired, and would be at great expense to the state.

## **STUDY ON CONSOLIDATION OF JOB SERVICE NORTH DAKOTA AND THE NORTH DAKOTA WORKERS COMPENSATION BUREAU AND THE STUDY ON THE NORTH DAKOTA WORKERS COMPENSATION BUREAU**

### **Background**

The legislative history of Senate Concurrent Resolution No. 4036 indicates that, due to the large amount of legislation on workers' compensation introduced for consideration by the 1991 Legislative Assembly, it appeared that replacing the three commissioners with a director had not resolved the problems within the workers' compensation system. The history suggests that it is necessary to study workers' compensation to determine what problems exist and how they can be remedied.

The legislative history of Section 76 of Senate Bill No. 2206 indicates that, because the consolidation of the Workers Compensation Bureau and Job Service North Dakota would not take place until July 1, 1993, an interim study of the consolidation would determine whether it is desirable and what the costs of consolidation would be.

## **North Dakota's Workers' Compensation Law**

North Dakota's workers' compensation law, enacted in 1919, is contained in North Dakota Century Code (NDCC) Title 65. The law is to provide sure and certain relief for an employee who is injured while engaged in hazardous employment, to provide relief for the employee's family and dependents, and to provide this relief to the exclusion of every other remedy. All civil actions against an employer for injuries incurred on the job are abolished.

## **Studies Since 1981**

A study of the workers' compensation premium determination system was conducted during the 1981-82 interim. The Legislative Council's interim Business Operations Committee reviewed premium rates for various job classifications using different payroll maximum levels. The committee noted that legislation had been introduced to raise the maximum wage base used for payroll determination in each session since 1971. The committee, partly as a result of prior failed legislation, did not recommend any bill to change the maximum payroll upon which premium was calculated.

During the 1983-84 interim, the Legislative Council's interim Government Reorganization Committee studied the possibility of consolidating the Commissioner of Labor, Job Service North Dakota, and Workers Compensation Bureau. The committee concluded that the three agencies should cooperate in an attempt to provide better labor and employment services. The committee recommended 1985 Senate Bill No. 2073 to allow the sharing of payroll information data between the Commissioner of Labor and the Workers Compensation Bureau. That bill was enacted by the 1985 Legislative Assembly.

## **1991 Legislation**

Several bills were introduced and passed in the 1991 legislative session dealing with workers' compensation. Among the most significant was Senate Bill No. 2206, which established an arbitration panel for workers' compensation claims, a maximum \$250 assessment for employers to pay for medical expenses incurred on each claim filed against them, a system of managed care to be administered by a third-party administrator, and a fee schedule based on the Medicare prevailing profile to be adopted if the bureau does not otherwise adopt a fee schedule pursuant to existing authority to do so. The bill also contained provisions effectuating the consolidation of the North Dakota Workers Compensation Bureau with Job Service North Dakota effective July 1, 1993.

House Bill No. 1321 raised the maximum amount of payroll upon which premium is based to 70 percent of the state's average annual wage and redefined the procedure by which the bureau establishes premiums due for each employer.

House Bill No. 1370 redefined the conditions under which extraterritorial workers' compensation coverage would be provided for North Dakota employers and employees. House Bill No. 1086 further defined employees for purposes of workers' compensation, and Senate Bill No. 2166 revised the requirements that a person must have to apply for the position of chief boiler inspector at the bureau. Senate Bill

No. 2146 created an information fund to be used to provide citizens, businesses, associations, and corporations with publications and statistical information concerning workers' compensation.

One item, proposed as an amendment to Senate Bill No. 2206, that received considerable attention during the session was the attempt to impose a one-fourth of one percent tax on employees for workers' compensation purposes. Testimony indicated the measure was expected to produce income in the amount of \$11 million to the fund for the next biennium. The amendment providing an "employee tax" was not adopted.

## **Administration of the Workers Compensation Bureau**

The committee reviewed information on the administration of workers' compensation agencies in the six states that have exclusive workers' compensation funds—Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming. Nevada and North Dakota are the only states having workers' compensation systems administered by independent state agencies.

The Workers Compensation Bureau has a claims department, an underwriting department, an accounting department, a loss prevention department, a boiler department, and a data processing statistical department. The bureau has a director who is appointed by the Governor and a deputy director who is appointed by the director.

## **Rehabilitation Services**

The committee reviewed rehabilitation services offered in all six of the exclusive fund states. All six states offer physical and vocational rehabilitation. The Wyoming statute does not specifically contain provisions relating to physical or vocational rehabilitation; however, the Workers Compensation Division in that state will refer an injured worker to state vocational rehabilitation services when it is appropriate. Vocational rehabilitation in Washington is provided at the discretion of the administering agency, and the staff and private vocational rehabilitation counselors perform vocational evaluations and prepare rehabilitation plans. The West Virginia workers' compensation rehabilitation section has 10 full-time rehabilitation counselors. The Ohio workers' compensation rehabilitation division is used to return an injured worker to productive employment. Nevada has a rehabilitation facility that provides therapy.

North Dakota uses private rehabilitation vendors located in the state. Rehabilitation may include a return to work or a period of retraining not to exceed two years, except in the case of a catastrophic injury. The bureau monitors all aspects of training and rehabilitation and provides payment of books, tuition, and supplies for retraining. Rehabilitation services are administered through the claims department.

In determining which rehabilitation companies will provide services to injured workers, the bureau requests that rehabilitation companies submit bids that, among other things, outline the qualifications of the rehabilitation staff. In awarding contracts, the bureau gives preference to the companies that employ

personnel with advanced degrees or certification as rehabilitation specialists.

### **Claims Services**

The bureau's claims staff is divided into four units. Each unit has one supervisor, three long-term disability analysts, one short-term disability analyst, one medical expense only analyst, three clerks, and one customer service representative. The analysts in the units are either claims analysts I or claims analysts II.

The analysts who manage the medical expense only claims and the short-term disability claims are claims analyst I positions, and they are classified at grade 20 in the North Dakota Central Personnel classification system. The salary range for grade 20 is \$1,403-\$2,165 a month. The bureau requires that a person applying for a claims analyst I position have two years of general college education resulting in an associate of arts or science degree and have knowledge of anatomy, physiology, legal, and rehabilitation concepts.

The analysts who manage the long-term disability claims are classified as claims analyst II positions, and they are at grade 23 in the classification system. The salary range for grade 23 is \$1,626-\$2,497 a month. The bureau requires that a person applying for a claims analyst II position have a bachelor's degree in social sciences, business administration, or medically related field plus three years of professional work experience in one of those fields with emphasis on client or medical provider services.

Some of the middle management positions are classified as claims analyst III positions and are at grade 25 in the classification system. The salary range for grade 25 is \$1,792-\$2,746 a month. The qualifications for applicants for positions classified at grade 25 vary according to the position. Some of the middle management positions that carry a grade 25 classification are unit supervisor, internal trainer/auditor, and rehabilitation coordinator.

### **Testimony and Committee Considerations**

The committee received testimony on various aspects of the consolidation of the Workers Compensation Bureau and Job Service North Dakota and on the workers' compensation system.

### **Consolidation with Job Service North Dakota**

The committee received information on the evolution of Job Service North Dakota. In 1921 the State Free Employment Service was established. In 1935 a labor division was established within the office of Commissioner of Agriculture and Labor. In 1937 the State Free Employment Service was transferred to the Workers Compensation Bureau and the State Employment Service was set up as a division of the bureau. Also in 1937 the unemployment compensation fund was established and an unemployment compensation division was set up within the bureau. In 1945 the unemployment compensation division was separated from the bureau. In 1965 the unemployment compensation division and the state employment service division were established within the Employment Security Bureau. In 1979 Job Service

North Dakota was established and the unemployment compensation division and the state employment services division were established as divisions of Job Service North Dakota. The 1979 legislation was proposed to change the name of the North Dakota Employment Security Bureau to Job Service North Dakota to keep the name uniform with the names of similar agencies in other states. The committee also reviewed the problems that may arise by having an agency that is operated with federal funds administered with an agency that is operated with special fund moneys. The question arose as to whether the Workers Compensation Bureau and Job Service North Dakota should be merged given the history of the two agencies having been separated and the findings of an earlier interim committee that workers' compensation, job service, and labor should cooperate but not be merged. Additional testimony suggested that consolidation would not resolve the problems within the workers' compensation system.

### **Performance Audit**

The committee was informed of the recommendation by the interim Legislative Audit and Fiscal Review Committee that the State Auditor conduct a performance audit of the Workers Compensation Bureau. The committee requested that the performance audit be expanded to include a study of the costs of consolidating the Workers Compensation Bureau and Job Service North Dakota as well as a study of claims processing procedures and adequacy and appropriateness of employer rate classifications.

The audit reviewed consolidation plans submitted by the Workers Compensation Bureau and Job Service North Dakota in determining the areas of costs that needed to be addressed for the study of the consolidation. The audit did not include a review of claims processing procedures because the bureau was in the midst of developing new procedures and restructuring its claims department.

The audit report contained several recommendations. In determining whether the functions performed by the bureau were compatible with the mission of the bureau, the audit report recommended that the boiler inspection division and the crime victims reparations program be removed from the jurisdiction of the bureau and be placed more appropriately with other agencies. The report also recommended that the bureau assess the usefulness of information being gathered pursuant to a grant from the Bureau of Labor Statistics.

The audit report reviewed the bureau's rate classification system that separates occupations according to the degree of hazard involved in performing a job and dictates the premium charged for each occupation. The classification system was developed in 1919 by the bureau's actuary and the system remains essentially the same as it was in 1919. The audit revealed two areas in which revision of the classification system is needed: grouping of occupations into classifications and using a single classification for county employees and a single classification for municipal employees. North Dakota has 138 classifications. Of 10 state funds sampled, two have fewer classifications than North Dakota and eight have from 207 to 866 classifications.

The audit report discussed a random selection, review, and comparison of classifications between North Dakota and other states for similar occupations to determine if the North Dakota system adequately classifies occupations with respect to the degree of hazard. The comparison showed that four of 11 classifications used by North Dakota were inadequate and included too broad a range of occupations. The report recommended that the bureau review and expand the classification system to better reflect the degree of hazard involved in employment in North Dakota. Included in that recommendation was a recommendation that the bureau separately classify municipal and county employees by occupation. In discussing the merit rating system used by the bureau, the report said the merit rating calculation may not accurately reward employers for overall safety in the workplace. The report recommended that the bureau revise its merit rating calculations so that frequency and severity of losses are factored into the determination of an employer's merit rating giving more weight to the frequency of claims. The report also recommended that the experience period used be reduced from five years to three years.

The report identified the reason for the \$190 million unfunded liability of the bureau as being the lowered premium rates from 1981 through 1985 based upon an actuarial representation that the fund was in good financial condition. Small increases in rates that occurred from 1986 through 1988 were inadequate to make up for the lowered rates from 1981 through 1985. The premium income for the fiscal year ending June 30, 1991, was approximately \$55 million less than the ultimate expenses on claims incurred for the same fiscal year. The bureau has a loss ratio of 278 percent and the average loss ratio for all state funds is 122.14 percent. The report identified the premium rates in North Dakota as among the lowest in the nation. The only other state reviewed in the audit with premiums almost as low as North Dakota's premiums is Wyoming. The bureau's planned 17 percent rate increase for fiscal year 1993 should put the bureau at a break even point. Even with the increase, the report stated that North Dakota's premiums will still be among the lowest workers' compensation premiums in the nation.

The audit report also discussed a review of the claims file review process and the claims file tracking processes used at the bureau. The bureau has many formal policies and procedures for vocational rehabilitation but there are few specific requirements on how to document vocational rehabilitation steps taken, the next date a claim file should be reviewed, and what steps need to be taken at a subsequent review. The report identified this as a cause of inconsistent documentation among claims files. The audit report recommended that policies and procedures be established requiring analysts to document all review steps taken. The report also recommended that a computerized calendar program be used by all analysts on a consistent basis to designate when a file should be reviewed and what action should be taken at that review. In reviewing the file tracking processes of the bureau, the audit report noted that there are no safeguards preventing a person from taking a file from a storage area or a work station without

authorization. The report recommended that the bureau establish policies and procedures to limit access to files and to maintain the integrity of the files.

Based upon plans for a consolidation submitted by the Workers Compensation Bureau and Job Service North Dakota, a study of the costs of that consolidation was developed. The report of the cost study concluded that a change in structure would involve making the Workers Compensation Bureau a division of Job Service North Dakota. Some decentralization of the claims handling process would probably be involved in a consolidation.

The bureau's computers are part of the state system administered by IBM. Job Service has a Unisys system. A review of the computer systems showed that a study of the costs of merging those two systems was more complex than anticipated and Unisys and IBM would possibly conduct additional studies of the computer systems.

The report stated that a consolidation would require salary adjustments for employees of the Workers Compensation Bureau. The report compared the salaries of employees of the Workers Compensation Bureau with the salaries of the employees of the job insurance division of Job Service North Dakota. The report showed that employees of the Workers Compensation Bureau perform substantially similar jobs for less pay than their counterparts in the job insurance division of Job Service North Dakota.

The report stated there is no office space available for lease in Bismarck which would provide for collocation of the Workers Compensation Bureau with Job Service North Dakota and it is not anticipated that any office space will become available. If a single facility were built to accommodate the Workers Compensation Bureau and Job Service North Dakota offices, the proceeds from the sale of the current Job Service North Dakota building could be used to pay for the construction of a new building. Restrictions on expanding the existing Job Service facility are imposed by city ordinances. One ordinance requires one parking stall for every 250 square feet of building structure and another ordinance requires each lot to retain 25 percent of greenery on natural surface. The cost study did not identify any personnel positions that were expected to be cut from either agency. The committee noted that the cost study report did not show that there would be a savings by consolidating the two agencies.

In responding to the audit report and the consolidation cost study presented to the committee, the Workers Compensation Bureau supported the recommendations of the Auditor's office noting, however, that the bureau already has policies and procedures in place to limit file access. In discussing the issues related to the cost study, the bureau acknowledged that four areas that would benefit from a consolidation would be administrative services, premium collections, claims rehabilitation decentralization, and the legal departments.

In responding to the cost study for the consolidation, representatives of Job Service North Dakota questioned whether the expenses identified in the study report are actually costs of a consolidation or are costs that should be addressed regardless of

whether a consolidation takes place. Job Service agreed that three areas in which a consolidation would result in improved services and improved efficiency were administrative support, joint employer reporting, and centralization of services.

Information presented by IBM showed that minimal interconnectivity between IBM and Unisys would cost approximately \$124,000. Additional costs would be incurred for hardware and software to accomplish more extensive, long-term interconnectivity.

Information presented by Unisys said an investment of approximately \$245,000 would create a platform of interconnectivity for future development. Interconnectivity produces varying degrees of functionality and the varying degrees result in varying costs.

### **Workers' Compensation Programs**

In reviewing the various aspects of the workers' compensation system and the potential consolidation of the bureau with Job Service North Dakota, the committee received information on the programs implemented at the bureau in response to legislation enacted in 1991.

The committee was informed that Sedgwick James of Minnesota had contracted with the bureau as the third-party administrator. The services Sedgwick James provides to the bureau include basic administration, training, reserve monitoring, and resolution of claims more than two years old. The program developed by Sedgwick James is designed to provide lasting benefits through efficient and effective use of existing resources and talents.

The committee received testimony on the managed care program the bureau contracted with HealthMarc to administer. The managed care program was implemented to review quality of care issues. The reviewers look at the medical necessity of treatment and only review the cases that can be impacted. The intent of managed care is not to determine necessary medical treatment but to eliminate unnecessary treatment. The bureau reported saving approximately \$4.80 for each dollar spent on managed care. The committee also received testimony on problems individual members of the North Dakota Medical Association are having with the managed care company.

The bureau adopted a fee schedule in January 1991 that was a discounted rate version of the Minnesota fee schedule. The fee schedule provides the maximum amounts a provider is paid for specific treatments and procedures. A provider may bill less than the amount allowed by the fee schedule. The bureau also reported it is reviewing the possibility of developing a preferred provider organization arrangement for workers' compensation.

Beginning October 1991, employers have been billed pursuant to the 1991 legislation requiring that an employer contribute up to \$250 per claim for the payment of medical expenses incurred as a result of a work-related injury or condition. In the first six months of billings, the total billings were approximately \$863,000. The largest reported assessment to one firm was \$12,250. As of May 1992, \$1.3 million had been collected as a result of the \$250 assessment.

The arbitration department was established in the bureau in late 1991. As of May 1992, there had been

184 requests for arbitration, of which 138 were pending and 39 were resolved. Thirty-four had been through the prehearing conference stage and 14 others had been scheduled for a prehearing conference. The arbitration program contains arbitrators from four different regions throughout the state. Each arbitrator is required to attend training seminars by the bureau before serving on an arbitration panel.

In reviewing the rehabilitation practices of the bureau, the committee was informed that as of January 1991, the bureau had contracted with three private rehabilitation companies to provide rehabilitation services for injured workers. The contracts limit the hours to be spent on different phases of rehabilitation. The limits imposed resulted in vendor costs being reduced by 25 percent. The bureau has implemented an initial contact disability assessment program to increase early contacts with employers to discuss an employee's possible return to work. If an employee cannot return to work at the same or a different job, the employee may be entitled to retraining benefits. The maximum benefit available in retraining is a two-year program and the approximate cost of a two-year retraining program is \$40,000 per person. This cost includes the cost of disability payments. The bureau has increased its focus on getting employees back into the work force based on their transferable skills rather than on retraining employees.

### **Workers' Compensation Insurance Alternatives**

The committee reviewed potential options to the existing workers' compensation system. Among those were provision of private insurance, reinsurance of catastrophic loss, and workers' compensation municipal pools.

Testimony received by the committee on private insurance versus workers' compensation insurance administered by a state fund showed that private insurance may be preferable for multistate operations. The testimony indicated that the trend, however, is that private insurers are getting out of the workers' compensation business. It was also explained that private insurance rates will not necessarily result in cheaper rates for North Dakota employers. Employers who cannot obtain insurance from a private carrier would still require insurance that would most likely be administered by a state fund.

A workers' compensation municipal pool is a group of local governments that make premium payments to a fund that is administered to pay claims, provide services, and fund a contingency reserve against unforeseen events. Pools are self-contained and provide services similar to the traditional insurance market. They differ from insurance in that they are nonprofit and they specialize and become experts in local government risk. Among the reasons offered for establishing local government pools are poor market conditions for obtaining coverage, complaints of service by existing carriers, no differentiation between good and bad loss experience, ineffective loss control, and untimely changes in rates. There are several different ways to set up municipal workers' compensation pools. Typically, it is a local option to determine which way would work best for any particular municipality or group.

The committee also received testimony on reinsurance options for the bureau. By utilizing pure excess reinsurance in conjunction with reinsurance for Catastrophe Protection, the negative impact of infrequent, yet severe losses can be mitigated and provide added rate and budget stabilization to the bureau. Reinsurance is used for many reasons. Among those reasons are protection against catastrophe, provision of stability to the fund, and provision of financial strength. Reinsurance would give the bureau a partner in sharing in catastrophic losses. Reinsurance does not necessarily mean there would be additional premiums charged to employers.

### **Bill Drafts Considered**

#### **Statute of Limitations for Workers' Compensation**

The committee considered a bill draft that relates to the time period within which a claim for workers' compensation benefits must be filed. The committee received information on a recent Supreme Court decision, **Rogers v. North Dakota Workers Compensation Bureau**, discussing the workers' compensation statute of limitations. The Supreme Court, in its opinion, seemed to be looking to the Legislative Assembly to help remedy the perceived inequities that may arise by imposing a one-year filing deadline from the date an employee knew or should have known an injury, condition, or disease was causally related to the employee's employment. The bill draft took into account the considerations suggested by the Supreme Court. The suggested changes would require that an injured employee be informed by that employee's treating health care provider that the employee's work activities were a substantial contributing factor to the development of the employee's injury or condition.

#### **Payment of Medical Expenses for Work-Related Injuries by Private Insurance**

The committee reviewed a bill draft that would have required private insurers to pay medical expenses for work-related injuries. It was suggested that an insurer would do a better job than the bureau is doing of administering the medical expense payment portion of workers' compensation claims. The bill draft was also viewed as a possible vehicle to provide an incentive to employers to provide other health insurance benefits to their employees in an attempt to reduce workers' compensation costs. If the responsibility for the administration of medical expense payments is removed from the bureau, it was suggested that the bureau could focus on more specifically defined issues such as disability and rehabilitation issues. Testimony suggested, however, that the bill draft may conflict with the provisions of the Employees Retirement Income Security Act of 1974, that the bill draft would not resolve disputes of compensability, and problems with the exclusive remedy provisions of workers' compensation may arise. Representatives of private insurers also suggested that there would be no administrative savings by having private insurance pay medical expenses and then having the bureau reimburse private insurers upon a finding of compensability. Because of the potential problems in implementing the proposal which were identified in testimony, the committee determined not to recommend the bill draft.

#### **Appropriation for Consolidation of Workers Compensation Bureau and Job Service North Dakota**

The committee reviewed a bill draft that would have provided an appropriation to accommodate the consolidation of the Workers Compensation Bureau with Job Service North Dakota. There were many different variables affecting the cost of the consolidation. Among them was the contention that some of the costs identified in the study would not actually be costs of consolidation. The least expensive consolidation of the two agencies was determined to be approximately \$1.1 million although some committee members questioned whether the consolidation would actually cost the estimated \$1.1 million shown in the cost study. It was suggested that short-term costs of consolidating the two agencies could result in savings in the long run through the more efficient administration of the agencies. The committee also considered whether consolidating the bureau with Job Service North Dakota would result in the resolution of the problems facing the bureau. It was suggested that consolidating a troubled agency with an agency that is experiencing few or no problems would simply create new problems for both agencies. The study presented on the costs of consolidating the two agencies showed that there would be no savings and no problem resolution as a result of the consolidation. The committee was also reminded that the two agencies were formerly combined and were split into two separate agencies.

#### **Repeal of Consolidation of Workers Compensation Bureau and Job Service North Dakota**

The committee, in conjunction with the discussion that arose out of consideration of the bill draft that would have provided an appropriation for the consolidation, reviewed a bill draft that repealed the provisions of 1991 Session Laws Chapter 714 which require the consolidation of the Workers Compensation Bureau with Job Service North Dakota. The committee added an emergency clause to the bill draft after receiving information on a measure on the general election ballot that would make the effective date of legislation August 1. If the proposed bill draft were to be approved by the Legislative Assembly, and no emergency clause was added, the consolidation of the Workers Compensation Bureau and Job Service North Dakota would take effect on July 1, 1993, and the repeal of the provisions requiring the consolidation would take effect on August 1, 1993. The emergency clause would put the bill into effect upon its filing with the Secretary of State and the two agencies would not have to be consolidated for 31 days.

#### **Repeal of Consolidation of the Workers Compensation Bureau with Job Service North Dakota and Workers Compensation and Job Service North Dakota Established as Divisions under the Commissioner of Labor**

The committee reviewed a bill draft that repealed the consolidation of the bureau with Job Service North Dakota and would make Job Service North Dakota and the bureau divisions under the Commis-



sioner of Labor. The committee received testimony that suggested that one of the biggest problems facing the consolidation of the bureau with Job Service North Dakota was the lack of leadership in conducting the consolidation. It was noted that the problems at the bureau had been created or had evolved over many years and the bureau had done a good job in recent years of trying to bring the problems under control. By making the bureau and Job Service North Dakota divisions under the Commissioner of Labor, savings could be effectuated through change. While there may be costs in the short run, in the long run there should be more efficient administration of employer and employee services in North Dakota. The bill draft required that the Commissioner of Labor be appointed by the Governor rather than be elected. The committee heard testimony that the costs involved with making the bureau and Job Service North Dakota divisions under the Commissioner of Labor would be minimal, as each agency could retain its current structure but the agency heads would be accountable to the commissioner.

The committee added an emergency clause and an effective date to the bill so the bill, if passed, will take effect on July 1, 1993, instead of August 1, 1993.

#### **Committee Recommendations**

The committee recommends Senate Bill No. 2040 to amend the statute of limitations for workers' compensation claims to reflect that the statute of limitations would not begin to run until an injured employee knew and was informed by the employee's treating health care provider that the employee's work activities were a substantial contributing factor in the development of a work-related injury or disease.

The committee recommends House Bill No. 1039 to repeal the provisions of 1991 Session Laws Chapter 714 which require the consolidation of the Workers Compensation Bureau with Job Service North Dakota. The bill contains an emergency clause.

The committee recommends House Bill No. 1040 to repeal the provisions of 1991 Session Laws Chapter 714 which require the consolidation of the Workers Compensation Bureau with Job Service North Dakota and to require that the Workers Compensation Bureau and Job Service North Dakota be established as divisions under the Commissioner of Labor. The bill provides that the Commissioner of Labor be appointed by the Governor rather than elected. The first appointment would take place at the end of the term of the current commissioner—January 1, 1995. The bill contains an emergency clause and an effective date of July 1, 1993.

The committee does not make any recommendation to remove the boiler inspection division and the crime victims reparations program from the jurisdiction of the Workers Compensation Bureau due to the recommendations made by the Legislative Audit and Fiscal Review Committee.

### **STUDY ON BASIC STATEWIDE HEALTH AND WORK-RELATED ACCIDENT INSURANCE FOR NORTH DAKOTA WORKERS AND THEIR DEPENDENTS**

#### **Background**

The legislative history of Senate Concurrent Resolution No. 4051 indicates that due to the high cost of

providing health care, many employer and employee groups have expressed the desire to participate in a state health insurance plan that would provide 24-hour coverage to all people insured by that group. This coverage may or may not distinguish between an occupational injury or disease and an injury or disease that does not arise out of or in the course of a person's employment.

#### **24-Hour Coverage**

Twenty-four-hour coverage is the term used to describe an insurance policy an employer carries on the employer's employees which does not distinguish between work-related and nonwork-related accidents or diseases. The coverage insures the employee regardless of whether the employee shows a relationship between an accident or illness and the employee's employment. The employee is, in effect, insured for all day, every day, while the employee remains with that employer.

There are several types of 24-hour insurance coverage plans. The first allows for the integration of workers' compensation benefits with group health insurance. The second provides medical benefits for all injuries and diseases but provides for payment of disability benefits only for disability due to work-related injuries or diseases. A third type allows for payment of disability benefits for disability due to any injury or illness but limits the payment of medical benefits to an injury or illness that is shown to be work related. A coverage plan that provides medical and disability benefits for all injuries but does not provide benefits for nonwork-related diseases is another type of coverage.

Twenty-four-hour coverage may also be one that provides medical and disability benefits for all illnesses but provides medical and disability benefits only for accidents that are work related. The final type of coverage would provide medical and disability benefits for all injuries and illnesses, regardless of whether the injury or illness arises out of a person's occupation.

#### **Action in Other Selected Jurisdictions**

Florida, California, Alaska, and Oregon are among the jurisdictions that have considered the implementation of 24-hour insurance coverage. A study by the California Senate Industrial Relations Committee recommended integrating workers' compensation, disability, and group health into one insurance coverage. Alaska has created a Universal Health Care Task Force to review the possibility of implementing 24-hour coverage, and Oregon has also organized a Task Force on Innovation in Workers' Compensation Insurance which is to consider integrated coverage.

In 1990 Florida enacted a provision that allows employers to obtain 24-hour coverage policies to cover the medical benefits of a workers' compensation policy. Whether or not an employer chooses to obtain 24-hour coverage for employees, the employer is required to maintain an insurance policy for coverage of mandated workers' compensation disability for work-related injuries and illnesses of the employees. The Florida provisions allow employees to pay deductibles and coinsurance for medical care. If employers do not choose to obtain 24-hour coverage, the payment of

medical expenses for work-related injuries and illnesses is covered by workers' compensation laws. The Florida law has not been put into effect as it is being reevaluated to determine if it conflicts with the Employees Retirement Income Security Act of 1974 and to determine if the state needs to apply for federal waivers.

In the mid-1970s New Zealand adopted a program of insurance that eliminates distinctions between work-related and nonwork-related accidents. The Accident Compensation Corporation is a quasi-governmental corporation. It provides compulsory coverage for all accidental injuries regardless of cause, and coverage is available to wage earners and nonwage earners. The system provides the exclusive remedy for all accidents. This remedy pertains to all motor vehicle accidents and medical malpractice injuries, as well as to work accidents.

The benefit structure of the New Zealand system is divided into two broad categories, one for wage earners and the other for nonwage earners. The system is financed by employers, drivers of motor vehicles, and taxation. The employer levy accounts for 55 percent of the income to the Accident Compensation Corporation fund. One of the largest stated problems with the New Zealand system is that it does not compensate for an illness that does not arise out of a person's occupation. An occupational illness is included within the definition of accident that would be compensable by the Accident Compensation Corporation. There is a move in New Zealand to include all illnesses in the category of conditions that are compensable through the Accident Compensation Corporation.

### **Testimony and Committee Considerations**

Testimony on the implementation of basic statewide health and work-related accident insurance coverage indicated that 24-hour coverage would relieve some of the confusion that workers and health care providers experience regarding who is going to pay their bills. This type of coverage would eliminate overlapping coverage that frequently results in fraud and overbilling. Twenty-four-hour coverage would allow the Workers Compensation Bureau to focus on questions of work loss and disability instead of questions of the work relatedness of injuries, illnesses, or conditions.

Some of the potential problems identified in implementing basic statewide health and work-related accident insurance for North Dakota workers are that some employers do not provide health insurance to their workers; some employers have employees who contribute to health insurance but because employees do not contribute to workers' compensation there may be a problem in trying to combine the two; and what type of coverage would be provided for employees, their spouses, and dependents. Another problem identified was whether 24-hour insurance coverage provisions could be implemented without violating the federal Employees Retirement Income Security Act of 1974. A 24-hour insurance coverage program would need to address an employer who is providing self-funded health insurance and how or whether that employer would be excluded from a 24-hour coverage plan. Testimony also suggested that the establishment of a 24-hour coverage plan in North

Dakota would not be as easy as combining two private insurance policies because North Dakota employers are required to obtain workers' compensation coverage through the state fund and not through private insurers. It was also questioned whether implementation of the 24-hour coverage plan would undermine the exclusive remedy protection provided to employers under workers' compensation laws.

### **24-Hour Coverage Marketing Product**

The committee recognized that there are several different types of 24-hour coverages in existence. The committee received information that specifically discussed the 24-hour coverage marketing product.

The 24-hour coverage marketing product integrates separate workers' compensation and accident and health insurance policies. The integration consists of coordination of claims management and/or the use of group health discounted provider rates for workers' compensation claims. The 24-hour coverage marketing product is an effort to reduce the insurer's and the insured's costs by reducing "double dipping" and reducing the misclassification of claims and fraudulent claims. The use of prenegotiated provider discounts provided through certain group health plans for workers' compensation medical claims also helps to contain medical costs.

Two reasons the 24-hour coverage marketing product is appealing are its potentials for helping to control costs and for expanding markets for insurers. Employers and insurers can achieve premium reductions and cost reductions by coordinating claims data and using prenegotiated provider discount rates for workers' compensation claims. Insurers may also be able to expand their markets by covering all an employer's insurance needs.

The committee also received information on problems in marketing and administering the 24-hour coverage marketing product experienced by one insurer. The marketing problems were that potential clients offer different risk factors to accident and health insurers than they do to workers' compensation insurers. The buyers of workers' compensation insurance tend to be risk managers or financial officers while the buyers for accident and health insurance tend to be employee benefit or personnel managers. Also, multiline insurers tend to use two different sellers because of differences in familiarity with the two products.

The administrative problems were the rating differences between the two products, the different determinations and payment of premiums for the two products, the different market practice regulatory standards, and the fact that health care insurers gather and manage data differently than workers' compensation insurers. Information about one program indicated that savings from coordinated claims management had not been as significant as anticipated. That program found that large claims frequently involve cross data checks, even between two different insurers. More vigorous cross checking of data on smaller claims resulted in increased administrative expenses and there had not been a significant savings realized from prevention of duplicative or inappropriate payments. Greater cost containment, according to one insurer, could probably be

realized through using Blue Cross Blue Shield for workers' compensation claims and using the same medical fee schedule for both types of claims.

### **Conclusion**

The committee made no recommendation on the feasibility of providing basic statewide health and work-related accident insurance to all North Dakota workers and their dependents.

## **STUDY OF WORKERS' COMPENSATION, INSURANCE, AND CONTRACT ISSUES THAT MAY ARISE WHEN AN EMPLOYER OR INSURER REQUIRES SUBROGATION, ADDITIONAL INSURED COVERAGE, OR INDEMNIFICATION OF AN EMPLOYEE OR CONTRACTOR**

### **Background**

The legislative history of Senate Concurrent Resolution No. 4067 includes testimony that the North Dakota Commissioner of Insurance was unsure of the ramifications of singling out one industry, i.e., oil, gas, water, or mineral extraction, to which legislation invalidating certain contractual provisions used in that industry would be applied if other industries also used similar contractual provisions that are not declared invalid. As a result, this study was suggested.

The situation Senate Concurrent Resolution No. 4067 addresses is a situation when, for example, a contractor begins working for an oil company at the site of a well, and as part of the contract to provide the work, the contractor includes a provision in the contract which requires the contractor to indemnify the company against loss or liability arising from the negligence of the company to any subcontractor who is responsible to the contractor. These provisions frequently are used in mining contracts.

### **Statutes in Selected Jurisdictions**

Eight states have statutory provisions invalidating indemnification clauses against loss or liability for damages due to an indemnitee's negligence. (The indemnitee is the person whose liability for a loss has been shifted to another.) Four states—New Mexico, Texas, Wyoming, and Louisiana—have provisions invalidating these types of indemnification clauses in contracts dealing with the mining industries including oil, gas, water, or other minerals. Of those four states, all but Texas also contained provisions that the sections invalidating the indemnification clauses do not affect workers' compensation coverage, i.e., a worker who is covered by workers' compensation at the time of an injury may pursue benefits from the workers' compensation carrier, when appropriate,

even if that worker has a cause of action against a contractor, company, or other third party. Five states—Arizona, New Mexico, North Carolina, Rhode Island, and South Dakota—have statutes invalidating indemnification clauses that indemnify a contractor against loss or liability for damages caused as a result of that contractor's negligence in the construction industry. Arizona also has a similar statute that applies to contracts between architects and engineers. New Mexico, North Carolina, and Rhode Island contain provisions that indicate workers' compensation coverage is not affected by the invalidation of indemnification clauses.

### **Testimony and Committee Considerations**

Testimony indicated that allowing a waiver of subrogation clause unfairly shifts the responsibility and liability for one party's negligence to other parties who should not be held responsible. Testimony showed that many oil companies require service contractors to sign master service contracts. Within the master service contract the service contractor is contractually liable to the oil company not only for its own negligence but also for the negligence of the oil company, its employees, and other third-party contractors working on the oil company property. Testimony stated that only five states of the 25 to 30 oil-producing states in the United States have legislation prohibiting waiver of subrogation clauses.

Testimony stated that requests by service contractors or subcontractors to waive subrogation rights and add an employer or a contractor as an additional insured on general liability contracts is seen as a legal strategy to shift the contractor's liability exposure somewhere else. Testimony indicated there is no cost involved in waiving a right to subrogate; however, the cost to add an additional insured varies depending upon the type of risk. Testimony indicated that if a prohibitive statute were enacted, the greatest potential impact would be to the oil companies. Additional testimony stated that legislation that directly affects the rights under contract may unjustifiably tilt the playing field in favor of contractors. It was suggested that oil companies may choose to hire employees rather than independent contractors as a way to avoid risks if they are deprived of the right to contract for protective indemnity clauses.

### **Conclusion**

The committee makes no recommendation on the workers' compensation, insurance, and contract issues that may arise when an employer or an insurer requires subrogation, additional insured coverage, or indemnification of an employee or contractor.

# JUDICIARY COMMITTEE

The Judiciary Committee was assigned two studies. Senate Concurrent Resolution No. 4061 directed a study of the investigation, prosecution, and treatment of offenders and victims in child sexual abuse cases. House Concurrent Resolution No. 3067 directed a study of charitable gaming laws and rules. The Legislative Council directed the committee to study the investigation, prosecution, and treatment of sexual offenders of developmentally disabled individuals. The Legislative Council also delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the North Dakota Commission on Uniform State Laws under North Dakota Century Code (NDCC) Section 54-35-02. The Legislative Council also assigned to the committee the responsibility for statutory and constitutional revision.

Committee members were Representatives Wade Williams (Chairman), Sarah Carlson, Howard Grumbo, James A. Kerzman, William E. Kretschmar, Bob Martinson, Jennifer Ring, and Brian T. Skar and Senators Barb Evanson, Layton W. Freborg, Bonnie Heinrich, Donna Nalewaja, and Wayne Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## **STUDIES OF THE INVESTIGATION, PROSECUTION, AND TREATMENT OF OFFENDERS AND VICTIMS IN CHILD AND DEVELOPMENTALLY DISABLED SEX ABUSE CASES**

### **Background**

#### **Origin of the Studies**

The study of the investigation, prosecution, and treatment of offenders and victims of child sex abuse cases was proposed because of the serious problem of child sexual abuse and the large increase in child sexual abuse cases over the past few years.

The Legislative Council directed the committee to study issues relating to sex offenses and developmentally disabled victims after the Association for Retarded Citizens asked the Legislative Assembly to study a special law making it a crime to have sex with someone who is mentally incapable of consenting to the sexual act.

#### **North Dakota Century Code Provisions**

Chapter 12.1-20 concerns sex offenses. Relevant sections in Chapter 12.1-20 with respect to child sexual assault prosecutions are Sections 12.1-20-03 (gross sexual imposition), 12.1-20-04 (sexual imposition), 12.1-20-05 (unlawful solicitation of a minor), 12.1-20-06 (sexual abuse of wards), 12.1-20-07 (sexual assault), and 12.1-20-11 (incest).

Many of the statutory provisions dealing with child sexual abuse are generally applicable to the sexual abuse of developmentally disabled individuals. Sections 12.1-20-03 and 12.1-20-07 explicitly address the crimes of gross sexual imposition and sexual assault against persons with mental disease or defect. Additionally, Section 12.1-20-06 prescribes the penalty for

abuse of wards; Sections 12.1-20-14 and 12.1-20-15 concern the credibility and the use of the reputation of a complaining witness, including a developmentally disabled victim in prosecutions brought under Chapter 12.1-20; and Section 12.1-20-16 provides for the appointment of a guardian ad litem for a victim of a sexual offense as described in Chapter 12.1-20.

In addition to the provisions found in NDCC Title 12.1, there are several provisions in the code which address the need for assistance to the developmentally disabled. Chapter 25-01.3 contains the provisions on the Committee on Protection and Advocacy. Chapter 50-25.2 contains the provisions governing vulnerable adult protection services, and Section 50-25.2-01 defines a vulnerable adult as "an adult who has a substantial mental or functional impairment."

North Dakota Century Code Section 29-04-03.1 provides the statute of limitations for the prosecution of a sexual offense described in Sections 12.1-20-03 through 12.1-20-08 or 12.1-20-11 involving a victim under 18 years of age. The limit is seven years from when the offense was committed. However, under NDCC Section 29-04-03.2, if the victim is under 15 years of age at the time the offense occurred, the statute of limitations does not start to run until the victim becomes 15 years old.

With respect to special needs of a child victim and witness, Chapter 12.1-34 establishes the minimum statutory requirements for the fair treatment of victims and witnesses in criminal proceedings.

North Dakota Century Code Chapter 12.1-35 provides the fair treatment standards for child victims and witnesses. This chapter encourages state's attorneys to provide other services to children in addition to those found in Chapter 12.1-34. The name of the victim is to be protected, and along with a limit on interviews, the prosecuting attorney is to take appropriate action to ensure a speedy trial. Any request for a delay or continuance asked of a judge must be weighed against the adverse impact of delay on the well-being of the child victim or witness.

The health and welfare of children is protected by Chapter 50-25.1, relating to child abuse and neglect. In North Dakota, an "abused child" is an "individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's health or welfare, or who is suffering from or was subjected to any act involving that individual in violation of [the sexual offenses sections of the code]." "Harm" is "negative changes in a child's health which occur when a person responsible for the child's health and welfare" commits, allows to be committed, or conspires to commit a sexual offense against a child. The Department of Human Services is to investigate any report of child abuse or neglect. When the report of abuse alleges a violation of a criminal sexual offense statute, the department and the local law enforcement agencies are to coordinate all activities.

Chapter 65-13 is a state-financed program devised to assist and compensate people who are the innocent

victims of crimes that result in bodily injury or death.

### **Rules of Evidence**

The prosecution of child sexual abuse cases was made somewhat easier when the North Dakota Supreme Court adopted Rule 803(24) of the North Dakota Rules of Evidence. The rule provides that an out-of-court statement by a child under the age of 12 years about sexual abuse of that child or witnessed by that child is admissible as evidence if the trial court finds that the time, content, and circumstances of the statement provide sufficient guarantees of trustworthiness. The child must either testify at the proceeding or be unavailable as a witness, in which case there must be corroborative evidence of the act that is the subject of the statement.

### **Judicial Interpretation**

North Dakota Century Code Title 12.1 does not define mental disease or mental defect and no reference to other titles is made in NDCC Section 12.1-20-03 or 12.1-20-07. The question of presence of mental disease or defect that renders a person incapable of understanding the nature of that person's conduct is an element that the prosecution must prove in prosecutions under NDCC Sections 12.1-20-03 and 12.1-20-07. In *State v. Kingsley*, 383 N.W.2d 828 (N.D. 1986), the North Dakota Supreme Court affirmed a conviction of gross sexual imposition against a defendant who engaged in sexual activity with two women in violation of NDCC Section 12.1-20-03(1)(e). The court determined that there was substantial evidence for the jury to find that the victims were incapable of understanding the nature of their conduct. A concurring opinion cautioned that the prosecution only "minimally" met its burden of proof and that medical testimony on the extent of the defect and the effect of the defect on the victim should be presented to the jury in these types of cases. Therefore, while not specifically defining the terms mental disease or mental defect, the Supreme Court has suggested a standard to establish sufficiently the presence of mental disease or defect for a jury.

### **1991 Legislative Action**

North Dakota Century Code Section 54-12-04.2 was enacted in 1991 to provide for a team of professionals to assist in the investigation and prosecution of child sexual abuse cases. The team consists of an assistant Attorney General, an agent of the State Bureau of Criminal Investigation, and a licensed social worker employed by the Department of Human Services. To obtain the help of the investigation and prosecution team, a local state's attorney is to make a request to the Attorney General.

North Dakota Century Code Section 31-04-04.1 was enacted in 1991 to provide that the videotaped statement of a child sexual offense victim under 15 years of age is admissible in court in certain situations.

North Dakota Century Code Sections 12.1-20-18 through 12.1-20-23 were enacted in 1991 to require a sex offender, convicted of certain offenses under Chapter 12.1-20, to register with the chief of police of the city or the sheriff of the county within 14 days after taking up residence or temporary domicile within

either jurisdiction. Before release from a correctional facility, an offender is required to notify the correctional facility of the address at which the offender expects to reside upon release, and the official in charge of the place of confinement is required to notify the appropriate law enforcement agency of the jurisdiction where the offender expects to reside. A person convicted of corruption or solicitation of minors or sexual assault must register for a period of five years after conviction or after release from incarceration, whichever is later. A person convicted of gross sexual imposition, sexual imposition, sexual abuse of wards, or incest must register for a period of 10 years following conviction or following incarceration, whichever is later. Failure to register is a Class A misdemeanor.

North Dakota Century Code Section 12.1-32-15 was enacted in 1991 to authorize a court sentencing a person convicted of a crime against a child to impose, in addition to other penalties, a requirement that the person register within 30 days after coming into a county in which the offender resides or is temporarily domiciled. Registration must occur with the chief of police of the city or the sheriff of the county if the person resides in an area other than a city. Failure to register under a court-imposed registration requirement is a Class A misdemeanor with a minimum penalty of 90 days in jail and a term of probation of one year. Failure to register may also constitute grounds for revoking parole or probation.

### **1991 Trial in Grand Forks**

On February 27, 1991, four men went on trial for allegedly raping a mentally retarded 18-year-old woman north of Grand Forks on September 16, 1990. The accused were charged with gross sexual imposition under NDCC Section 12.1-20-03(1)(e). Under this statute, the question the jury had to answer was whether a rational, prudent person would have known the woman was mentally retarded. If so, then the person who had committed a sexual act with her would be guilty. The testimony at trial differed on a number of points—some witnesses testified they had no problem telling that the woman was mentally retarded, while others testified that they could not tell that the woman was mentally retarded after talking with her; witnesses for the prosecution testified that the woman had an IQ of 65 and she could be easily manipulated by anyone; defense witnesses testified that they had no problem communicating with the woman nor was it obvious that she was mentally handicapped. After a three-day trial, the jury found all four defendants not guilty. The Association for Retarded Citizens then asked the North Dakota Legislative Assembly to study the rape laws dealing with gross sexual imposition of developmentally disabled victims because of the outcome of this trial.

### **Testimony and Committee Considerations**

The committee received and reviewed information on the prevalency of sexual abuse involving child victims and developmentally disabled victims. The committee also received information on programs and services available for sex offenders in the state. Testimony received by the committee centered on three main issues—the appointment and payment of

guardians ad litem, sex offender registration, and a sex offense consent defense in cases involving a developmentally disabled victim.

### **Guardian Ad Litem Payment**

The guardian ad litem statutes specifically apply to minors and no provisions are available for appointment of guardians ad litem for the developmentally disabled who are not minors in sexual assault or abuse cases. Although a guardian ad litem can be appointed for a developmentally disabled person who is not a minor pursuant to Chapter 30.1-28, testimony received by the committee indicated that this type of appointment may not be in the ward's best interest in a sexual assault or abuse and neglect case. Testimony indicated that the powers granted to a guardian ad litem under Chapter 30.1-28 may not encompass those necessary to fully serve the interests of the ward.

North Dakota Century Code Section 12.1-20-16 requires a guardian ad litem appointed by a district court in a sex offense prosecution be paid by the state. The committee discovered that guardians ad litem were not getting paid because of confusion over whether the Attorney General or the North Dakota Supreme Court was to pay the guardians ad litem. Testimony indicated that the Supreme Court's position was that after the 1989 Legislative Assembly changed the payment of prosecutorial expenses from the Supreme Court to the Attorney General, the Supreme Court was no longer responsible for payments to guardians ad litem. The committee was informed that the Attorney General and the North Dakota Supreme Court had agreed to work out the payment problems until the Legislative Assembly could address the confusion in 1993.

### **Sex Offender Registration**

Testimony received by the committee indicated that the sex offender and crimes against children offender registration statutes were causing confusion and problems. Under the sex offender registration procedures, all offenders must register, while offenders committing certain crimes against a child only have to register if required to do so by a court. It was suggested that if a person committed a sex offense against a child the registration requirement could be interpreted to be at a court's discretion. Testimony also indicated that the registration requirements are not standardized for the offenders who register.

In the course of reviewing inconsistencies and conflicts in the registration statutes, the committee considered two bill drafts as vehicles for improving the offender registration statutes. One bill draft would have made mandatory the registration requirement for an individual who has been convicted of certain crimes against a child. Testimony received regarding this bill draft indicated that mandatory registration may be too harsh a penalty in some instances and other alternatives may achieve better results. The other bill draft, presented by a representative of the Parole and Probation Department, consolidated both registration statutes into one statute. It was explained that combining the two statutes would make enforcement of the registration requirements easier by the department.

While reviewing the offender registration requirement, committee members expressed concern that the statements, fingerprints, and photographs of an offender were not public records. It was suggested that as a matter of good public policy these materials should be open records. No testimony was presented on the question of why the statements, fingerprints, and photographs of offenders should not be available to the public.

### **Consent Defense**

The committee reviewed the statutes that apply when a sex crime is committed against a developmentally disabled victim. Judges, prosecuting and defense attorneys, developmentally disabled sex offense victims, parents of developmentally disabled sex offense victims, representatives of state agencies, and advocacy groups expressed their concerns on handling sex crime cases involving developmentally disabled victims. A committee meeting was held in Grand Forks so that the committee could receive testimony on issues raised in the Grand Forks trial.

Testimony before the committee indicated there are approximately 19,000 state residents with mental retardation, of which 89 percent are "mildly retarded." Testimony indicated that the mildly retarded individuals do not look retarded, and their mental ability would not be easily identified in brief conversations. A representative of the Association for Retarded Citizens testified that it was patently inconsistent for the law to provide that victims under the age of 16 are incapable of consenting to sex crimes, but that prosecutors in cases having victims with a mental age of seven years must prove that the perpetrator of the crime knew of the victim's mental disease and also knew that the victim was incapable of understanding the nature of the conduct. Testimony by a developmentally disabled victim of a sexual offense indicated that the present law protects the offender and not the victim.

Testimony received by the committee indicated that a trial involving a developmentally disabled victim is a rarity and such a trial is complicated by the lack of informed jurors and by hard to understand jury instructions on the applicable law.

The committee reviewed a bill draft recommended by the Association for Retarded Citizens to create an affirmative consent defense for the situation when a sex crime is committed against an individual with a mental disability. Testimony in support of the bill draft indicated that the bill draft would correct a fundamental unfairness that can result when developmentally disabled individuals are victims of crimes. Testimony also indicated that proving the defense of consent would not place an unreasonable burden on the defendant.

### **Recommendations**

The committee recommends Senate Bill No. 2041 to permit a guardian ad litem to be appointed for a developmentally disabled victim in a sex offense case. The bill also requires the Attorney General to pay the fees of all guardians ad litem appointed in sex offense cases.

The committee recommends Senate Bill No. 2042 to consolidate the sex offender and crimes against

children offender registration statutes. The bill also removes the confidentiality provision and provides that all statements, fingerprints, and photographs required to be submitted by an offender when registering are public records.

The committee recommends Senate Bill No. 2043 to create the affirmative defense of consent in cases involving victims with a mental disease or defect. The bill sets forth the procedures that must be followed or the consent of a sex offense victim may not be raised by the defendant if the victim suffers from a mental disease or defect.

## **CHARITABLE GAMING STUDY**

### **Background**

In the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The scandal and controversy following this attempt led to the state's first constitutional amendment, which outlawed all forms of lotteries and gift enterprises.

In 1976 the constitutional prohibition was amended to allow the Legislative Assembly to authorize public-spirited organizations to conduct games of chance when the net proceeds of the games are devoted to public-spirited use. Temporary laws were passed by the 1977 and 1979 Legislative Assemblies and "permanent" legislation was enacted in 1981 (NDCC Chapter 53-06.1).

Since 1981, several Legislative Council interim committees have studied charitable gaming and suggested many of the changes that have been made to the charitable gaming law. The changes have primarily affected the kinds of games that can be held, the kinds of organizations that can hold them, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds.

Responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials since 1977. Enforcement attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law.

In 1991 the State Gaming Commission was created. The commission consists of a chairman and four other members appointed by the Governor with the consent of the Senate. The commission shares authority with the Attorney General to impose fines on organizations, distributors, and manufacturers who violate any provisions of law or rule. The commission also shares authority with the Attorney General to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of any provision of law or rule. The commission is given full authority for adoption of rules to implement the charitable gaming laws, which previously was the power of the Attorney General.

### **Testimony and Committee Considerations**

The committee conducted several meetings at which the committee received testimony from individuals

and organizations involved in charitable gaming in the state. The committee's considerations centered upon two issues—the use of moneys by eligible organizations for investigative purposes and nonsufficient fund checks received by gaming organizations.

### **Use of Moneys by Eligible Organizations for Investigative Purposes**

During the course of the committee's review of charitable gaming laws and rules, the State Gaming Commission presented a proposal to prohibit an eligible organization from using money from any source for certain activities. The proposal would have prohibited the use of gaming funds, directly or indirectly, to conduct background investigations of everyone other than employees, prospective employees, and volunteers of charitable gaming organizations. Testimony on the proposal was presented by members of the State Gaming Commission and charitable gaming organizations and associations.

Testimony in support of the proposal indicated that certain charitable gaming organizations had improperly used gaming funds to investigate the personal backgrounds of the appointed members of the State Gaming Commission. The chairman of the commission indicated that avenues were available to gather information about public appointees' qualifications and backgrounds during the Senate confirmation process and gaming organizations should not be able to use gaming revenue to gather information on prospective commission members.

Testimony in opposition to the proposal indicated that charitable organizations should be able to make a determination on their own whether appointees are qualified for the State Gaming Commission. Testimony also indicated that the proposal would have a chilling effect on the investigation of the qualifications and viewpoints of individuals appointed for certain positions.

Testimony pointed out that one of the big hindrances of implementation of the proposal was that revenue from "any source" was restricted. The committee reviewed a bill draft that would have limited the use of only revenues from games of chance for investigative purposes. It was suggested that the situation concerning the Charitable Gaming Association of North Dakota and its investigation of the State Gaming Commission had been sufficiently aired during committee discussion and no further action should be taken.

### **Nonsufficient Fund Checks**

Testimony received by the committee indicated that bad checks in the gaming industry is an ever-increasing problem. It was suggested that a limit be placed on the dollar amount of checks a person would be able to write at one gaming site.

The committee considered a bill draft that would have limited checkwriting at charitable gaming sites. The bill draft would have permitted a gaming site to accept checks amounting to no more than \$100 in any one day from any one individual.

Testimony received in opposition to the bill draft pointed out that organizations receive a substantial number of checks for over \$100 and it would be hard for an organization to distinguish between uses of the

proceeds from such checks. Testimony questioned why the gaming industry would have been singled out to enforce the bad check laws. Testimony also indicated that the gaming industry has no more of a bad check problem than do other businesses.

### **Conclusion**

The committee makes no recommendation as a result of its study of charitable gaming issues.

### **UNIFORM LAWS REVIEW**

The North Dakota Commission on Uniform State Laws consists of eight members and is statutorily established by NDCC Section 54-55-01. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The national conference consists of representatives of all states and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under NDCC Sections 54-35-02 and 54-55-04, the state commission must submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Council for its review and recommendation during the interim between legislative sessions.

The state commission recommended six uniform Acts to the Legislative Council for its review and recommendation. These Acts range from minor amendments to existing uniform Acts adopted in North Dakota to comprehensive amendments on subjects covered by existing state law. The six Acts were amendment of the Uniform Statutory Rule Against Perpetuities; amendment of the Uniform Rights of the Terminally Ill Act; either repeal or revision of Uniform Commercial Code Article 6 - Bulk Transfers; amendment of Uniform Commercial Code Article 3 - Negotiable Instruments; amendment of the Uniform Transfers to Minors Act; and amendment of Uniform Probate Code Article II - Intestacy, Wills, and Donative Transfers.

#### **Amendment of the Uniform Statutory Rule Against Perpetuities**

In 1991 North Dakota adopted the Uniform Statutory Rule Against Perpetuities and it is codified as NDCC Sections 47-02-27.2 through 47-02-27.5. In 1991 the National Conference of Commissioners on Uniform State Laws recommended an amendment to the Uniform Statutory Rule Against Perpetuities.

The rule creates a "wait and see" test based on a 90-year period for determining the validity or vesting of future interests in property. This test replaces the old rule that extinguished or validated present interests on the basis of some possible future event.

The committee received and reviewed information comparing North Dakota law with a proposed amendment to the rule. Testimony in explanation of the amendment indicated the amendment was primarily stylistic and technical. There was no testimony in opposition to the amendment.

#### **Amendment of the Uniform Rights of the Terminally Ill Act**

The Uniform Rights of the Terminally Ill Act was adopted in 1989 and is codified as NDCC Chapter 23-

06.4. In 1987 and 1988 the National Conference of Commissioners on Uniform State Laws recommended amendments to the Uniform Rights of the Terminally Ill Act. The proposed amendment would permit an individual to designate another person to make decisions regarding life-sustaining treatment and would provide a model form by which designation of another decisionmaker may be accomplished.

The committee received and reviewed information comparing North Dakota law with the proposed amendment. Testimony in support of the proposed amendment suggested the committee explore expanding the Act to permit a verbal declaration of a person's intent to withhold or withdraw hydration and nutrition. It was suggested the verbal declaration would be consistent with the United States Supreme Court decision in **Cruzan v. Director, Missouri Department of Health**, 497 U.S. 261(1990).

The committee considered a bill draft that would have allowed a verbal declaration to withhold or withdraw hydration and nutrition upon a showing of clear and convincing evidence. Testimony on the bill draft indicated that a diverse group of people and organizations were meeting to work out a number of points of understanding regarding verbal declarations to withhold or withdraw hydration and nutrition which would be presented to the 1993 Legislative Assembly.

#### **Uniform Commercial Code Article 6 - Bulk Transfers (Optional Repeal or Revision)**

The National Conference of Commissioners on Uniform State Laws approved the optional repeal or revision of Uniform Commercial Code Article 6 - Bulk Transfers in August 1988. According to the national conference, changes in the business and legal context in which bulk sales are conducted have made regulation of bulk sales unnecessary. Therefore, the national conference has withdrawn its support for Article 6 of the Uniform Commercial Code and encourages that the article be repealed or, in the alternative, revised for those states that may wish to continue to regulate bulk sales.

The committee received and reviewed information comparing NDCC Chapter 41-06 with the optional repeal or revision of Uniform Commercial Code Article 6 - Bulk Transfers.

Testimony in support of the repeal of Uniform Commercial Code Article 6 indicated that the article has become a technical trap that results in major impediments to bona fide commercial transactions.

Testimony in explanation of the proposed revision of the article indicated that the revisions would significantly expand the article's scope and would, therefore, further complicate the manner in which commercial transactions are conducted. There was no testimony in support of revision of the article.

#### **Amendment of Uniform Commercial Code Article 3 - Negotiable Instruments**

Uniform Commercial Code Revised Article 3 was adopted in 1991 and is codified as NDCC Chapter 41-03 effective July 1, 1993. In 1991 the National Conference of Commissioners on Uniform State Laws



recommended an amendment to the various states for adoption. The amendment related to a lost, destroyed, or stolen cashier's check, teller's check, or certified check.

The committee received and reviewed information summarizing the proposed amendment. Testimony in support of the proposed amendment indicated the amendment would remedy the hardship situations when a cashier's, teller's, or certified check is lost, stolen, or destroyed. Under present law the indemnification bond required can cause a hardship for many people. There was no testimony in opposition to the proposed amendment.

#### **Amendment of the Uniform Transfers to Minors Act**

The Uniform Transfers to Minors Act was adopted in 1985 and is codified as NDCC Chapter 47-24.1. The National Conference of Commissioners on Uniform State Laws recommended an amendment to the states in 1986. The amendment would allow a custodianship to be created in a brokerage account or its equivalent.

The committee received and reviewed information summarizing the proposed amendment. Testimony in explanation of the amendment indicated the present law does not make it clear whether brokerage accounts can be used to create custodianships and the amendment should resolve any doubts over the use of brokerage accounts. There was no testimony in opposition to the proposed amendment.

#### **Amendment of Uniform Probate Code Article II -**

##### **Intestacy, Wills, and Donative Transfers**

The Uniform Probate Code was enacted in 1973 with changes to allow for specific provisions pertinent to North Dakota. The National Conference of Commissioners on Uniform State Laws approved the revision of Uniform Probate Code Article II in 1990. The revised Uniform Probate Code Article II - Intestacy, Wills, and Donative Transfers deals with substantive changes to the elective share of a surviving spouse, omitted children, harmless error, antilapse, and rules of construction.

The committee received and reviewed information comparing NDCC Chapters 30.1-04 through 30.1-11, with the revised Uniform Probate Code Article II - Intestacy, Wills, and Donative Transfers.

Testimony in opposition to revised Uniform Probate Code Article II - Intestacy, Wills, and Donative Transfers indicated many of the changes were good; however, increased litigation could result if some sections are enacted. It was suggested that the sections dealing with nonademption of specific devises and writings intended as wills be eliminated and the antilapse sections be revised.

#### **Recommendations**

The committee recommends Senate Bill No. 2044 to amend the Uniform Statutory Rule Against Perpetuities. The amendment is primarily stylistic and technical.

The committee recommends Senate Bill No. 2045 to amend the Uniform Rights of the Terminally Ill Act to permit an individual to allow another person to

make life-sustaining treatment decisions for the individual.

The committee recommends House Bill No. 1041 to repeal Uniform Commercial Code Article 6 - Bulk Transfers. The article has become an impediment to efficient commercial transactions and changes in the business and legal context in which bulk sales are conducted have made regulation of bulk sales unnecessary.

The committee recommends House Bill No. 1042 to amend Uniform Commercial Code Article 3 - Negotiable Instruments. The bill would remedy situations when a cashier's check, teller's check, or certified check is lost, destroyed, or stolen.

The committee recommends House Bill No. 1043 to amend the Uniform Transfers to Minors Act to allow brokerage accounts to be used to set up custodianships for minors.

The committee recommends that the North Dakota Commission on Uniform State Laws revise the amendments of Uniform Probate Code Revised Article II to incorporate suggestions from the Probate and Trust Section of the State Bar Association of North Dakota and introduce the revised amendments in the 1993 Legislative Assembly.

#### **STATUTORY AND CONSTITUTIONAL REVISION**

The committee was assigned statutory and constitutional revision responsibilities relating to resolving conflicts between statutes, clarifying the application of statutes, and amending statutes that have been invalidated or otherwise substantially affected by court decisions. The committee's revision responsibilities also include making technical corrections that eliminate inaccurate or obsolete name and statutory references and superfluous language.

#### **Firearm Probation Requirements - Recommendation**

The committee was informed of a potential conflict between a condition of probation under NDCC Section 12.1-32-07, which permits a probationer to possess a firearm, destructive device, or other dangerous weapon and NDCC Section 62.1-02-01, which imposes a five- or ten-year waiting period before a felon or person convicted of a Class A misdemeanor involving violence or intimidation can possess a firearm.

The committee considered two bill drafts to resolve the potential conflict between NDCC Sections 12.1-32-07 and 62.1-02-01.

One bill draft would require a court to provide as a specific condition of probation that a defendant not be permitted to possess a firearm, destructive device, or other dangerous device while on probation. Testimony in support of the bill draft indicated the change would increase peace officer safety and public safety. It was also noted that possession of a firearm by a supervised probationer puts the probationer in jeopardy of violating federal law. Federal law prohibits a felon from possessing firearms unless the felon's civil rights have been restored by a state. Under NDCC Section 62.1-02-01 the state restores a felon's right to possess a firearm after a five- or ten-year period. There was no testimony in opposition to the bill draft.

The other bill draft would have permitted a felon or

person convicted of a Class A misdemeanor involving violence or intimidation to own or possess a firearm at any time if granted written permission by a court. Testimony in opposition indicated that the clarification of NDCC Section 62.1-02-01 as contained in the bill draft was unnecessary because the statute is currently interpreted without much difficulty. There was no testimony in support of this bill draft.

The committee recommends House Bill No. 1044 to amend NDCC Section 12.1-32-07 to require a court to provide as a condition of probation that the defendant be prohibited from possessing a firearm or destructive device while on probation.

### Technical Corrections - Recommendation

The committee recommends House Bill No. 1045 to make technical corrections throughout the Century Code. The bill would eliminate inaccurate or obsolete name and statutory references or superfluous language. The following table lists the sections affected and describes the reasons for the change:

| Section          | Reason for Change   |
|------------------|---|
| 11-11-57         | The Bureau of Sport Fisheries and Wildlife is now the United States Fish and Wildlife Service.  |
| 14-02.4-14       | This change makes the language consistent.  |
| 14-17-12(1)      | The reference to Section 14-17-14(5) is deleted because subsection 5 was repealed by S.L. 1989, Chapter 148, Section 36.  |
| 15-22-01         | Section 15-47-38.1 was repealed by S.L. 1991, Chapter 198, Section 3. "Teacher" was redefined in Chapter 198, Section 1, to include superintendents. Thus, the appropriate references are Sections 15-47-27 and 15-47-38. |
| 15-40.2-09       | The language change of "or" to "of" corrects a typographical error.   |
| 15-62.1-01       | The sections of Chapter 6-09.1 relating to the advisory board of directors to the Bank of North Dakota were repealed and replaced by sections in Chapter 6-09 by S.L. 1989, Chapter 110.                                  |
| 23-06.2-05(5)    | The reference change corrects an incorrect statutory reference.   |
| 23-07.5-05(1)(e) | Chapter 23-06.1 was repealed by S.L. 1989, Chapter 303, and replaced by Chapter 23-06.2.  |
| 24-02-01.3       | The reference to Section 44-01-06 is deleted because that section was repealed by S.L. 1987, Chapter 537.   |
| 24-10-03.1(2)(b) | The reference change corrects an incorrect statutory reference.   |
| 26.1-18-29       | Section 26.1-07-09 was repealed by S.L. 1991, Chapter 305, Section 14. Similar provisions are found in Section 26.1-06.1-16.  |
| 26.1-25.02       | Section 26.1-25-11 was repealed by S.L. 1991, Chapter 302, Section 26. Similar provisions are contained in Section 26.1-25-10.5.  |
| 26.1-25-10.5(1)  | The reference change corrects an incorrect statutory reference.   |
| 27-11-20         | Section 211 of the Constitution has been renumbered as Section 4 of Article XI.   |
| 39-06.1-06(7)    | The reference change corrects an incorrect statutory reference.   |
| 44-04-19.1(3)    | The language inserted was inadvertently omitted in 1991 Senate Bill No. 2231. Attorney General's Opinion 92-04 interpreted Section 44-04-19.1 to include the additional "or".   |
| 51-18-04.1       | The reference change corrects an incorrect statutory reference.   |
| 54-03-25         | Senate Bill No. 2206 (1991) changed all references to "workers compensation bureau" to "job service North Dakota" effective July 1, 1993.   |
| 57-40.2-02.1(1)  | The reference to Section 57-40.2-03.4 is deleted because that section was repealed by S.L. 1991, Chapter 680, Section 2.  |
| 61-24.5-10       | The reference change corrects an incorrect statutory reference.   |
| 65-01-02(20)     | The reference change corrects an incorrect statutory reference.   |
| 65-05-10(7)      | Section 65-05.1-06 was repealed by S.L. 1989, Chapter 771, Section 6, and replaced by Section 65-05.1-06.1.   |
| 65-05.1-04(2)    | The reference change corrects an incorrect statutory reference.   |

# LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Council by law appoints a Legislative Audit and Fiscal Review Committee as a division of its Budget Section. The committee was created “[f]or the purposes of studying and reviewing the financial transactions of this state; to assure the collection and expenditure of its revenues and moneys in compliance with law and legislative intent and sound financial practices; and to provide the legislative assembly with formal, objective information on revenue collections and expenditures for a basis of legislative action to improve the fiscal structure and transactions of this state . . .” (North Dakota Century Code (NDCC) Section 54-35-02.1).

In setting forth the committee’s specific duties and functions, the Legislative Assembly said, “[i]t is the duty of the legislative audit and fiscal review committee to study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, to confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state.” (NDCC Section 54-35-02.2)

The Lieutenant Governor by law serves as chairman of the Legislative Audit and Fiscal Review Committee. In addition to Lt. Governor Lloyd Omdahl, other committee members were Representatives Odell Flaagan, Tom Freier, Gereld F. Gerntholz, John Howard, Richard Kloubec, Raymond Schmidt, Kenneth N. Thompson, Mike Timm, and Gerry L. Wilkie and Senators David E. Nething, David O’Connell, and Harvey D. Tallackson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

During the 1991-92 interim, the State Auditor and independent accounting firms presented 110 audit reports. An additional 73 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 presented at the request of committee members.

The committee reviewed the state’s June 30, 1990, and June 30, 1991, Comprehensive Annual Financial Reports. The first audited Comprehensive Annual Financial Report was for the year ended June 30, 1991, and the State Auditor issued an unqualified opinion on that report.

The committee also has the following duties and responsibilities:

- Receive and review annual reports on the status of accounts receivable from the Department of Human Services and the State Developmental Center at Grafton.

- Receive the State Fair Association’s audit reports.
- Receive the annual audit report from corporations receiving ethyl alcohol or methanol production subsidies.
- Contract for the audit of the State Auditor’s office.

## STATE AUDITOR

### Audit of the State Auditor’s Office

North Dakota Century Code Section 54-10-04 requires the Legislative Assembly to provide for an audit of the State Auditor’s office. The Legislative Council contracted with Eide Helmeke and Company, Certified Public Accountants, for an audit of the State Auditor’s office for the years ended June 30, 1990 and 1991. The firm presented its audit report at the committee’s October 1991 meeting. In accordance with the terms of the contract between the Legislative Council and Eide Helmeke and Company, the firm reviewed the audit procedures and practices of the State Auditor’s office. The findings of the review by Eide Helmeke and Company of the State Auditor’s office’s audit procedures and practices include the following:

- Some selected audit engagements indicated a lack of confirmation procedures, including receivables, accounts payable, and pension information. Eide Helmeke and Company recommended that the State Auditor’s office increase the use of confirmation procedures to obtain sufficient material for a reasonable basis for issuing an opinion regarding the financial statements.
- The State Auditor’s office’s use of spreadsheet and word processing capabilities of personal computers is limited. Eide Helmeke and Company recommended that the State Auditor’s office increase its use of personal computers for spreadsheet applications for its audit working papers and for word processing applications.

### Suggested Guidelines for Performing Audits of State Agencies

In previous bienniums, the Legislative Audit and Fiscal Review Committee adopted guidelines for auditors performing audits of state agencies. During the 1991-92 interim, the committee reaffirmed that audits are to be in compliance with these guidelines. The guidelines as revised by the committee require that the auditor in the audit report is to make specific statements regarding:

1. Whether expenditures were made in accordance with legislative appropriations and other state fiscal requirements and restrictions.
2. Whether revenues were accounted for properly.
3. Whether financial controls and procedures are adequate.
4. Whether the system of internal control was adequate and functioning effectively.

5. Whether financial records and reports reconcile with those of state fiscal officers.
6. Whether there was compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning.
7. Whether there was evidence of fraud or dishonesty.
8. Whether there were indications of lack of efficiency in financial operations and management of the agency.
9. Whether actions have been taken by agency officials with respect to findings and recommendations set forth in the audit reports for preceding periods.
10. Whether all activities of the agency were encompassed within appropriations of specific amounts.
11. Whether the agency has implemented the state-wide accounting and management information system including the cost allocation system.
12. Whether the agency has developed budgets of actual anticipated expenditures and revenues on at least a quarterly basis and compares on at least a quarterly basis actual expenditures and revenues on the accrued basis to budgeted expenditures and revenues.

The committee during the 1991-92 interim added point number 12 after reviewing survey results on state agency and institution budget monitoring practices. Preparing quarterly reports comparing actual and budgeted expenditures and revenues on the accrual basis is necessary so that an agency is aware of its financial status during an interim.

### **Comprehensive Annual Financial Reports**

North Dakota Century Code Section 54-10-01 requires the State Auditor to provide for the audit of the state's general purpose financial statements and a review of the material included in the Comprehensive Annual Financial Report. The committee received and reviewed the state's June 30, 1990, and June 30, 1991, Comprehensive Annual Financial Reports. The first audited Comprehensive Annual Financial Report was for the year ended June 30, 1991, and the State Auditor issued an unqualified opinion on the report. The committee received information on how to best utilize the information contained in the Comprehensive Annual Financial Report. The Comprehensive Annual Financial Report includes the following four sections:

- Introductory section. This section includes information on the state's organizational structure, the nature and scope of the services the state provides, the agencies included in the reporting entity, and a summary of the state's financial activities and the factors that influence these activities.
- Financial section. This section includes the independent auditor's report, financial statements, and schedules and notes to the financial statements.
- Statistical section. This section includes statistical details providing information on the state's financial and economic conditions.
- Budgetary information. This section provides a comparison of budgeted and appropriated amounts to actual revenues and expenditures.

The Comprehensive Annual Financial Report contains the audited financial statements for state agencies including the elected officials. The individual audit reports for most state agencies beginning for the year ended June 30, 1991, do not include financial statements. The committee recommends that the June 30, 1992, audited Comprehensive Annual Financial Report be made available to the 1993 Legislative Assembly as soon as possible.

### **Performance Audits**

North Dakota Century Code Section 54-10-01 provides that the State Auditor's office is to provide for performance audits of state agencies as determined necessary by the State Auditor or the Legislative Audit and Fiscal Review Committee. A performance audit must include a review of elements of compliance, economy and efficiency, and program results to determine whether an agency has complied with applicable laws and legislative intent and is managing its resources efficiently, and whether the agency's programs are achieving desired results.

The committee recommended that the State Auditor's office conduct performance audits of the following during the 1991-92 interim:

1. Workers Compensation Bureau.
2. Policies and regulations regarding distribution of state funds for human services programs, including basic care and general assistance.
3. Department of Human Services' procedures and regulations regarding use of less than effective drugs and the Federal Drug Administration and Medicaid regulations regarding drugs.
4. Policies and practices of the State Motor Vehicle Fleets.
5. State computer and office equipment maintenance and lease contracts.
6. A review of the state's duplication of services.

### **Workers Compensation Bureau Performance Audit**

#### **Committee Review**

The committee reviewed the performance audit of the Workers Compensation Bureau. The performance audit included the following recommendations:

- The Boiler Inspection Division and the crime victims reparations program should be transferred to other agencies that may be better suited to handle the programs.
- The bureau should determine if administering the occupational safety and health statistics federal grant is of a benefit to the agency.
- The bureau should review and expand its rate classification system to better reflect the degree of hazard involved in employment in North Dakota.
- The bureau should separately classify municipal and county employees by occupation.
- The bureau should revise its merit rating calculation so frequency and severity of losses are factored into an employer's merit rating.
- The bureau should establish policies and procedures that require claim analysts to document action in a claim file.

- To avoid duplicate payments, the bureau should:
  - Place documentation and vendor billings in chronological order.
  - Review the payment file prior to payment authorization.
  - Place an editing process in the computer system to recognize potential duplicate payments.
  - Conduct periodic random testing to identify duplicate payments.

The Legislative Council's 1991-92 interim Industry, Business and Labor Committee was assigned a study to determine the feasibility and desirability of consolidating the Workers Compensation Bureau with Job Service North Dakota and the amount required to be appropriated from the general fund to implement any consolidation. Please refer to the Industry, Business and Labor Committee's report for information on this study.

### Recommendations

The Legislative Audit and Fiscal Review Committee recommends House Bill No. 1046 that transfers the Boiler Inspection Division duties from the Workers Compensation Bureau to the Insurance Commissioner's Fire and Tornado Fund Division. The Fire and Tornado Fund Division plans on offering boiler and inspection insurance coverage beginning January 1, 1993, and believes that the duties of the Boiler Inspection Division will be an appropriate step in the coverage process. As a result, the Fire and Tornado Fund Division may be able to provide the same or expanded services at less cost. For the 1989-91 biennium, the Boiler Inspection Division expenses were \$224,894, or \$109,628 more than the inspection fee collections of \$115,266. The performance audit indicated that the program should be transferred to prevent Workers Compensation Bureau resources from being used for functions that are not compatible with legislative intent for the Workers Compensation Bureau. It is recommended that the transfer of the Boiler Inspection Division include the related staff and inspection fee revenue.

The committee recommends House Bill No. 1047 to provide that the crime victims reparations program be administered by the Parole and Probation Division of the Department of Corrections and Rehabilitation rather than the Workers Compensation Bureau. The committee heard reports that indicated the crime victims reparations program is more compatible with the Parole and Probation Division than with the Workers Compensation Bureau. For the 1989-91 biennium, the crime victims reparations program expenditures totaled \$775,145 and revenue totaled \$766,851. The performance audit indicated that the program should be transferred to prevent Workers Compensation Bureau resources from being used for functions that are not compatible with legislative intent for the Workers Compensation Bureau. The transfer will include the related staff and resources.

Also, the committee received the final report of the performance audit of the Department of Human Services, and status reports on the performance audits of State Fleet Services and state leasing and maintenance contracts. The committee recommends that the State Auditor's office have these performance

audits completed and available for distribution to the 1993 Legislative Assembly.

Refer to the report of the Budget Committee on Human Services for committee action on the performance audit on the administration, mission and goals, and quality assurance of the Department of Human Services and refer to the Budget Committee on Government Services report for committee action on the performance audit on the Department of Human Services alcohol and drug abuse treatment services, including privatization of programs.

### Other

North Dakota Century Code Sections 1-08-02, 1-08-03, 1-08-04, 15-10-12, and 25-01-10 and Constitution of North Dakota, Article X, Section 12, provide that moneys and property received by an agency or institution from a gift, grant, donation, or bequest must be used for the specific purposes for which they are donated or given. If no terms are imposed upon a gift, grant, donation, or bequest, it must be deposited in the state treasury or in some instances it may be used for the general maintenance of the entity. The committee reviewed audit reports that indicated institutions were receiving bequests that did not include specific terms for use and that the bequests were not being deposited in the state treasury or being used for the general maintenance of the institution receiving the bequest. The committee passed a motion recommending that if restrictions are placed on a gift, grant, donation, or bequest, state agencies should obtain in writing a statement from donors containing the terms of the gift.

The committee reviewed a report on the most common recommendations in state agency audit reports. The list was compiled from the State Auditor's office review of 23 audit reports completed between June 1991 and December 1991. Of the 23 audit reports, 11 audit reports contained no recommendations and the following recommendations were contained in the other 12 audit reports:

| Number of Times the Recommendation Was Made | Description of Recommendation  |
|---|--|
| 3   | Fixed assets should be disposed of properly  |
| 3   | A yearend physical inventory should be taken   |
| 2   | Expenditures should be recorded in the proper fiscal year                              |
| 2   | Accounting duties should be properly segregated  |
| 1   | Subrecipients of federal funds should be correctly monitored by the supervising agency |
| 1   | Proper safekeeping of receipts should be maintained                                    |
| 1   | Prior authorization of outside checking accounts should be obtained                    |
| 1   | Proper procedures for maintaining conference checking accounts should be administered  |
| 1   | There should be no trading or swapping of goods or services                            |

Number of  
Times the  
Recommendation  
Was Made

- | Number of Times the Recommendation Was Made | Description of Recommendation   |
|---|---|
| 1   | Office of Management and Budget purchasing procedures should be complied with |
| 1   | Expenditures should be budgeted for under the appropriate line item           |
| 1   | All state moneys should be deposited with the State Treasurer                 |
| 1   | Supporting documents for disbursements should be maintained on file           |

The above list includes only the recommendations included in the written audit reports and does not

include any findings or recommendations noted in the audit workpapers.

**OTHER COMMITTEE ACTION**  
**Accounts Receivable**

North Dakota Century Code Sections 25-04-17 and 50-06.3-08 require that the Developmental Center at Grafton and State Hospital present a detailed report to the Legislative Audit and Fiscal Review Committee of writeoffs of accounts receivable and the status of accounts receivable for each fiscal year.

The committee accepted detailed reports on the amount of the accounts receivable written off during the 1991-92 interim. The amounts are as follows:

| Fiscal Year | State Hospital | Developmental Center at Grafton | Human Service Centers | Total        |
|-------------|----------------|---------------------------------|-----------------------|--------------|
| 1991        | \$10,227,664   | \$1,826,261                     | \$37,747              | \$12,091,672 |
| 1992        | \$ 8,658,075   | \$2,367,880                     | \$50,753              | \$11,076,708 |

**State of North Dakota Outstanding  
Indebtedness**

The State Auditor's office presented its report on

North Dakota outstanding indebtedness as of June 30, 1991. The following is the state's total outstanding indebtedness as of June 30, 1991:

| Date          | Pledged Full Faith and Credit of the State | Without the Pledged Full Faith and Credit of the State | Total           |
|---------------|--|--|-----------------|
| June 30, 1991 | \$57,960,000                               | \$968,193,068  | \$1,026,153,068 |

Of the \$968,193,068, \$49.9 million relates to higher education revenue bonds, \$466.6 million to housing revenue bonds, and \$294.8 million to student loan revenue bonds.

**Lieutenant Governor Committee  
Membership - Recommendation**

The committee recommends House Bill No. 1048 to remove the Lieutenant Governor as a member of the Legislative Audit and Fiscal Review Committee and Budget Section. The committee indicated that an executive branch official should not be involved in legislative committee work and decisions. Also, the proposed bill will avoid situations in which the Lieutenant Governor would review audits of programs and activities under his or her control. The Lieutenant Governor was statutorily made the chairman of the Legislative Audit and Fiscal Review Committee when the position of Lieutenant Governor was part time and it was believed that by serving on the committee the Lieutenant Governor could become familiar with state government's financial activities. Now that the Lieutenant Governor is full time, membership on the committee for this purpose is no longer necessary.

**Other**

The committee expressed its expectation that the State Auditor's office and private accounting firms report severance pay violations under North Dakota Century Code Section 54-14-04.3. The violations should be reported under point number 6 of the committee's points covered in the audit reports which asks if the agency or institution complied with stat-

utes, laws, rules, and regulations. The committee expects that the auditors use appropriate techniques to assure that employees, including those working outside the office, are working required hours and completing required work. Such techniques should help the auditors become aware of any violation of severance pay laws.

The committee discourages the Board of Higher Education from granting tenure to administrative personnel, and encourages the Board of Higher Education to adopt a policy on tenure for administrative personnel. Although the committee recognizes situations requiring an exception, committee members still believe the Board of Higher Education should develop and adopt a policy precluding tenure for administrative personnel.

The committee received reports on the coverage provided by the state bonding fund, the North Dakota School of Medicine's liability insurance, and the timing of state agencies grant line item transfers.

The June 30, 1992, Secretary of State audit report contained findings indicating that the department exceeded its line item budget authority and its need to improve its fiscal controls. At its last meeting, the committee agreed not to review the audit report, although some concerns were expressed concerning that report.

Also, pursuant to NDCC Section 10-23-03.2, the committee is to receive the audit reports from corporations receiving ethyl alcohol or methanol production subsidies. During the 1991-92 interim, the committee did not receive any audit reports from corporations receiving ethyl alcohol or methanol production subsidies.

# LEGISLATIVE MANAGEMENT COMMITTEE

The Legislative Council delegated to the Legislative Management Committee the authority of the Legislative Council under North Dakota Century Code (NDCC) Section 54-35-11 to make necessary arrangements to facilitate the proper convening and operation of the Legislative Assembly. Legislative rules are also reviewed and updated under this authority. The Legislative Council also directed the committee to study the issue of a long-distance telephone policy as it applies to legislators. The Legislative Council delegated to the committee: (1) the responsibility for administering 1985 Session Laws, Chapter 77; 1987 Session Laws, Chapter 29; and 1989 Session Laws, Chapter 25 (appropriations for improvements to the legislative wing of the State Capitol); (2) the power and duty of the Legislative Council under NDCC Section 54-35-02 to determine access to legislative information services and impose fees for providing such services and copies of legislative documents, and to control the use of the legislative chambers and permanent displays in Memorial Hall; and (3) the authority of the Legislative Council under NDCC Section 46-02-04 to determine the contents of contracts for printing of legislative bills and resolutions and journals.

Committee members were Senators William S. Heigaard (Chairman), Jim Dotzenrod, William G. Goetz, Tish Kelly, Corliss Mushik, Gary J. Nelson, David E. Nething, and Dan Wogsland and Representatives Ronald A. Anderson, Roy Hausauer, Richard Kloubec, William E. Kretschmar, John Schneider, Scott B. Stofferahn, and Ben Tollefson.

The committee submitted the "SPECIAL SESSION ARRANGEMENTS" portion of this report to the Legislative Council at the special meeting of the Council in October 1991. The Council accepted the report submitted in October 1991 for submission to the 52nd Legislative Assembly meeting in special session in November 1991. The committee submitted the remainder of the report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. The committee distributed a 1991 legislative process questionnaire to all legislators. The survey asked specific questions on legislative procedures and also requested comments on how to improve the legislative process. The results of the survey are referred to throughout this report.

## Order of Motion

The committee compared the Senate and House rules and discovered Senate Rule 312 refers to a motion to postpone indefinitely. Senate and House Rules 312 list the precedence of motions in determining when they are to be received. The reference to a motion for indefinite postponement refers back to before the 1975-76 interim, when the Legislative Procedure and Arrangements Committee recommended replacing a motion for indefinite postpone-

ment with a motion for do not pass. Since 1977, references to indefinite postponement have been removed or replaced, as appropriate, when discovered in the rules. The committee recommends amendment of Senate Rule 312 to eliminate the reference to a motion to postpone indefinitely. The committee also recommends amendment of Senate and House Rules 312 to separate a motion to refer or amend into a motion to refer and a motion to amend in order to clarify any ambiguity as to the precedence of either motion.

## Votes Required for Certain Questions

Senate and House Rules 318 list votes required for various questions. The committee discovered the listings of questions requiring a majority or two-thirds vote of the members-elect do not include reference to adoptions of propositions of a divided question as provided by Senate and House Rules 319. Senate and House Rules 319 provide that each division of a divided question requires the same vote for adoption that the division would require if it stood alone. Under this rule, some propositions of a divided question may require a majority vote of the members-elect or a two-thirds vote of the members-elect. The committee recommends amendment of Senate and House Rules 318(1), (2), and (4) to include in the listings reference to adoption of propositions of a divided question if the division would require a majority vote of the members present, a majority vote of the members-elect, or a two-thirds vote of the members-elect, as appropriate.

## Referral to Appropriations Committee

The committee considered whether bills having a fiscal impact should be required to be referred or rereferred to the Appropriations Committee. The committee also reviewed the procedure for handling a bill that has a fiscal impact, that received a do not pass report, and that passed. During the 1991 legislative session, when such a situation occurred in the House, the House reconsidered the bill and referred it to the Appropriations Committee.

A member of the committee also suggested there be a rule on rereferral to the Appropriations Committee of a bill with a fiscal note indicating a fiscal impact. Under Senate and House Rules 330(1) and 501(2), bills appropriating \$5,000 or more must be referred or rereferred to the Appropriations Committee before final action by either house. The rules do not require referral or rereferral to the Appropriations Committee of any measure to which is attached a fiscal note indicating the measure does have a fiscal impact. Committee members reviewed examples of fiscal notes prepared during the 1991 session and expressed concern over the range of information provided in fiscal notes as well as the credibility of fiscal notes. The committee determined that the rules should be more specific as to what is to be addressed by a fiscal note, especially when effective dates of bills are postponed so as to reduce or eliminate the short-term fiscal impact of a bill.

The committee recommends amendment of Senate

and House Rules 330 to provide that (1) every measure to which is attached a fiscal note stating that the measure has an effect of \$50,000 or more on the appropriation for a state agency or department must be rereferred to and acted on by the Appropriations Committee and (2) a measure required to be referred or rereferred to the Appropriations Committee which received a do not pass recommendation from a committee and which then is passed by the house is deemed reconsidered and must be referred to and acted on by the Appropriations Committee if it has not been so referred before passage; amendment of Senate and House Rules 501(2) to replace the description of measures to be referred to the Appropriations Committee with a reference to measures that are to be referred or rereferred under Senate or House Rule 330, as appropriate; and amendment of Joint Rule 501 to require fiscal notes to state impact in dollar amounts, identify the impact on revenues and expenditures, identify the impact for the current, upcoming, and next succeeding bienniums, and identify the effect on the appropriation for the state agency or department for the current, upcoming, and next succeeding bienniums.

#### **Rereferral to Committee**

The committee reviewed the procedure followed when a committee report is for do pass and rereferral to another committee. The question was raised whether there should be a vote on the do pass recommendation and then rereferral or whether the measure should just be rereferred. Senate and House Rules 601(2)(e) provide that if the committee report is for amendment and then rereferral to another committee, the measure must be rereferred to the appropriate committee after adoption or rejection of the amendment. The committee recommends creation of new Senate and House rules to require a measure that is to be rereferred as the result of a committee report or legislative rules to be rereferred after action on any amendment recommended by the committee report or before any vote on the committee report if no amendment is recommended. When the report of the committee of rereferral is presented to the house, the presiding officer is to announce every report that was made on that measure.

#### **Recorded Roll Call Votes**

The committee discussed whether the final disposition of any resolution providing for the expenditure of money, e.g., the resolution designating legislative employees and rates of pay, should be by roll call vote. By tradition, roll call votes have been taken on such resolutions. The committee recommends amendment of Senate and House Rules 339 to provide for a roll call vote on any resolution that provides for the expenditure of money.

#### **Return of Amended Measure**

The committee discussed whether the rules should provide a procedure for handling a measure amended by the other house and returned to the house of origin. Various procedures have been followed, and during the 1991 session questions were raised concerning whether a measure should be referred to the full committee or to the chairman of the committee for a

determination of whether to concur in amendments by the other house. Referral of the measure to the full committee would protect the interests of the minority, but this could also result in the minority controlling a recommendation with respect to a committee that is equally balanced or weighted to the minority. The committee recommends creation of new Senate and House rules to provide that upon the return to the house of origin of a measure that was amended and passed by the other house, the presiding officer is to refer the measure to the chairman of the standing committee that reported the bill or resolution to the original house. The proposed rule leaves open the question of which committee chairman should be involved if the measure had been rereferred to a second committee.

#### **Concurrence in Amendments**

The committee reviewed the procedure followed to place measures upon which a motion to concur in amendments adopted by the other house has prevailed on the 11th order so they may be taken up the same legislative day. The committee reviewed a proposal to provide for placement on the calendar for second reading and final passage upon adoption of a motion to concur in amendments adopted by the other house and to allow action on the measure immediately after placement on the calendar. It was discovered that this procedure has been followed when the amendments have been fully explained during the explanation of the rationale for the motion to concur. The committee recommends creation of new Senate and House rules to provide that upon adoption of a motion to concur in amendments adopted by the other house and explained to the house of origin, the measure must be placed on the calendar for second reading and final passage and may be acted on immediately after placement on the calendar.

#### **Sponsors of Measures**

The committee reviewed the numerical limitations on individual sponsors of measures. Senate and House Rules 401(2) and 404(2) allow up to three sponsors from each house for measures jointly sponsored by members from both houses. Senate and House Rules 404(2) allow not more than five members of one house to sponsor a measure. The committee recommends amendment of Senate and House Rules 401(2) and 404(2) to provide that a bill or resolution may not have more than six members of the Legislative Assembly as sponsors, regardless of whether the members are senators or representatives.

#### **Introduction Deadlines**

The committee reviewed a proposal to move the deadlines for introducing bills to the fifth, 10th, and 15th legislative days. The 1991 Legislative Assembly convened on Monday, January 7, 1991, pursuant to the selection of that date by the Legislative Council under NDCC Section 54-03-02. The date for convening the 1993 Legislative Assembly is Tuesday, January 5, 1993. For the 1991 session, the bill introduction deadlines were changed so the various deadlines would fall on Mondays. The committee determined that a bill introduction deadline should continue to



fall on Monday. The committee recommends amendment of Senate and House Rules 402(1) to provide the deadlines for introducing bills would fall on the fifth, 10th, and 15th legislative days, as appropriate. The committee also recommends amendment of Senate Rule 401(1) to reflect the limit on the number of bills a member may introduce after the 10th legislative day, which was reflected in House Rule 401(1) in 1991, and amendment of Joint Rule 203(1) to avoid conflicts with the actual bill introduction deadlines, which have varied since 1989.

### **Committee Jurisdiction and Names**

The committee reviewed the effect the reduction in size of the 1993 Legislative Assembly would have on rules requirements for specific numbers of members to cause action to be taken, as well as the effect on the size of each standing committee. The committee reviewed the subject matter descriptions for the standing committees, and focused on the jurisdictions of the State and Federal Government Committees and the Human Services and Veterans Affairs Committees. Although more measures are referred to the State and Federal Government Committees than to the Human Services and Veterans Affairs Committees, more roll call votes are taken by the Human Services and Veterans Affairs Committees than by the State and Federal Government Committees. The committee determined that the subject matters of "immigration and statistics," "temperance," and "Director of Institutions" are obsolete and the transfer of veterans' matters to the State and Federal Government Committees could assist in evening the workloads between the two committees. It was also noted that a major subject area of the State and Federal Government Committees is pensions and benefits. The committee recommends amendment of Senate and House Rules 501(3) and (4) to rename the Human Services and Veterans Affairs Committees as the Human Services Committees, to remove matters affecting temperance and the military and veterans from the specific listing of subject matters under the Human Services Committees, to rename the State and Federal Government Committees as the Government and Veterans Affairs Committees, to remove matters affecting immigration and statistics and the Director of Institutions from the specific listing of subject matters under the Government and Veterans Affairs Committees, and to add matters affecting the military and veterans and government pensions and benefits to the listing of subject matters of the Government and Veterans Affairs Committees.

### **Rereferral of Amendments to Appropriations Committee**

The committee discussed the procedure followed by the House during the 1991 session when some committee reports for amendment and do not pass did not provide for rereferral to the Appropriations Committee if the amendments affected appropriations. If the report did not provide for rereferral, the rereferral was made by motion. The committee recommends amendment of Senate and House Rules 601(2)(e) to require rereferral of a measure to the Appropriations Committee if it is properly the subject of the rereferral, regardless of whether the report provides for rereferral.

### **Placement on Calendar After Action on Amendment**

The committee reviewed a question by Lt. Governor Lloyd Omdahl on whether placement of a measure on the calendar immediately after action is taken on the amendment results in immediate consideration or placement at the foot of the calendar. The committee determined that immediate action would result in a much more orderly flow of business. The committee recommends amendment of Senate and House Rules 601(2)(g) to provide that a measure placed on the calendar immediately after action is taken on the amendment may be acted on immediately.

### **Divided Committee Reports**

The committee discussed the procedure that should be followed when there are majority and minority reports on a measure, and the question is which one should be considered first. Senate and House Rules 601(3) provide the procedure for handling divided reports if one report is for amendment and the other is for do not pass. Senate and House Rules 602(3) provide the procedure for considering divided reports recommending two or more amendments. Although divided reports are rare in the Senate, the procedure followed by the House is that the presiding officer announces the effect of passage of a majority report on any minority reports. In addition, the House has allowed use of a motion to substitute a minority report for the majority report. The committee determined that the procedure followed for divided reports recommending two or more amendments should be extended to any report regardless of whether amendments are recommended. The committee recommends amendment of Senate and House Rules 602 to provide for consideration of majority reports before consideration of minority reports and consideration of minority reports in accordance with the number of committee members signing the reports.

### **Transmittal of Bills with Emergency Clauses**

The committee discussed whether the rules should ensure that an emergency clause drops off a bill if the requisite vote is not attained. Under current practice, a bill that contains an emergency clause and which passes the house of origin without the requisite vote to carry the emergency clause is retyped without the emergency clause before transmittal to the other house. A bill that contains an emergency clause and passes the second house without the requisite two-thirds vote is not retyped to remove the emergency clause before returning to the house of origin. Before enrollment, the vote tallies are checked to make sure that a bill containing an emergency clause has received the requisite two-thirds vote of each house.

The committee reviewed a 1927 North Dakota Supreme Court decision, **State ex rel. Sorlie v. Steen**, that determined that failure to secure a two-thirds vote is not an "amendment" and thus the emergency clause is not dropped from a bill. The committee determined that any confusion on this issue would be clarified by a specific rule. The committee recommends creation of a joint rule to provide

that if a bill with an emergency clause has passed without the vote required to carry the emergency clause, the bill must be transmitted to the other house without the emergency clause.

### **Consent Calendar**

The committee discussed procedures that could improve the flow of legislative work. The committee determined that concurrent resolutions directing Legislative Council studies could be placed automatically on the consent calendar if those resolutions received a do pass or do pass as amended recommendation.

Because of the extensive use of the consent calendar by the House in approving amendments on sixth order during the 1991 session, the committee reviewed the procedure followed by the House in placing amendments on the consent calendar and removing any amendment from the consent calendar upon objection of any member. Although not specifically provided for in the rules, such a procedure has been determined to enhance the flow of work in the House as well as speed the approval of noncontroversial items. The committee reviewed the requirements of Joint Rule 206 that one-third of the members-elect must object in order to remove any uncontested item from the consent calendar, but only one member is needed to remove any contested resolution from the consent calendar. The committee determined that there is no valid reason for distinguishing between uncontested and contested items, and any member should be able to have an item removed from the consent calendar.

The committee recommends amendment of Joint Rule 206 to provide for placement of every Legislative Council study resolution that receives a "do pass" or "do pass as amended" recommendation on the consent calendar regardless of whether the committee report recommends placement on the consent calendar, and to provide that upon objection of any member to the placement of any item on the consent calendar, the item would be taken off the consent calendar.

### **Conference Committee Reports**

The committee compared the procedure provided in Joint Rule 301 with the actual procedure followed in acting on conference committee reports. The committee determined that the rule should reflect practice. The committee recommends amendment of Joint Rule 301(6) and (7) to provide that the house of possession is to act on the conference committee report and proceed to take action on the bill or resolution and then transmit the bill or resolution, if appropriate, to the other house for action.

### **Distribution of Bills, Resolutions, and Journals**

The committee reviewed the practice of setting aside boxes in the joint bill and journal room for the placement of copies of bills, resolutions, journals, calendars, committee hearing schedules, and bill status reports. The boxes are available to state agencies and other public and private entities on a first-come, first-served basis. The committee discussed the practice of providing "free" boxes in the joint bill and journal room, but determined that no charge should

be imposed at this time. The committee did determine that there should be a fee for certain legislative documents placed in the boxes and those fees are described elsewhere in this report. The committee recommends amendment of Joint Rule 603 to provide that only one copy of each bill and resolution is to be placed in a box, and then only after payment of the appropriate fee. Persons who personally request a limited number of specific bills and resolutions may receive up to five copies of those items.

### **Sexual Harassment Policy**

The committee discussed whether the Legislative Assembly should have a policy concerning sexual harassment. A major issue was whether a policy of not condoning sexual harassment should be in the legislative rules, published in the journals, announced by the presiding officers, or contained in a resolution. The committee recommends creation of Joint Rule 901 to adopt the policy that sexual harassment will not be tolerated and to define sexual harassment. Adoption of this policy in the form of a rule is intended to give a strong indication of the seriousness of sexual harassment as well as to provide a "permanent" means to inform legislators of the policy through requiring a vote on the policy and publishing the policy in the rules manual. The rule does not provide a procedure for handling complaints of sexual harassment. The committee determined the legislative leadership should be responsible for determining the appropriate response for each situation.

### **Other Rules Proposals Considered**

The committee reviewed several other proposed rules amendments. These included (1) amendment of Senate and House Rules 101 to provide for each house to convene at 8:00 a.m., call roll, and recess until 1:00 p.m.; (2) amendment of Senate and House Rules 204(3) and 501(5) to eliminate the Committees on Correction and Revision of the Journal and have corrections and revisions announced by the presiding officers; (3) amendment of Senate and House Rules 306 to limit to five minutes the total speaking time of a member on the same subject; (4) amendment of Senate and House Rules 324 to provide that no joint rule could be suspended without notice to the other house and no amendment to a rule could be made unless the rule was first reconsidered; (5) amendment of Senate and House Rules 318(4) and creation of Joint Rule 104 to provide that after adoption a joint rule could be amended, suspended, or repealed only with a concurrence of two-thirds majority of the members-elect of each house; (6) amendment of Senate and House Rules 328 and Joint Rule 501 to provide that except for a bill or resolution first referred to the Appropriations Committee, a bill or resolution for which a fiscal note is required under Joint Rule 501 could not be referred to committee until the fiscal note had been attached to that bill or resolution and that the presiding officer would determine whether a fiscal note is required, rather than the Legislative Council; (7) creation of Senate and House rules to provide for the committee of referral to consider measures required to be rereferred to the Appropriations Committee during the first or second week following referral, depending on whether the referral is made before or

after notice of hearings is delivered; (8) amendment of Senate and House Rules 506 to increase from 21 to 26 the number of legislative days a measure could be held in committee; (9) amendment of Senate and House Rules 601(2)(a) to provide that without objection, proposed amendments on the sixth order would be voted on in a single vote and if any member objected to voting on a proposed amendment with other proposed amendments in a single vote, that amendment would be voted on as a separate item (which was the procedure followed by the House during the 1989 and 1991 sessions); (10) amendment of Joint Rule 103 to provide that messages would have to be delivered to the presiding officer without announcement and the presiding officer could direct the Secretary or Chief Clerk to announce the message on the appropriate order of business; and (11) creation of Joint Rule 601(8) to provide that if the conference committee report was not adopted, the conference committee would be discharged and a message to that effect would be sent to the other house and if the other house had not acted on the report the conference committee of that house would be discharged. After discussing the impact of the proposals on current procedures, the committee either specifically rejected or took no action on each proposal.

### **Rules Manual**

The committee reviewed a proposal to reprint the rules and committees handbook. Under the proposal, the entire rules manual would be reprinted, with appropriate grammatical and style changes. The rules would be reordered and renumbered as appropriate, colored pages would distinguish various sections of the rules manual, the manual would have a consolidated index, and the current size and binding style would be retained (although the size of print would be enlarged to assist readability). The committee determined that the rules manual should be reprinted as proposed.

## **JOURNAL ENTRY RULE**

### **Background**

Senate Bill No. 2324 (1991) passed the Senate on February 14, 1991.

The House amended the bill but the Senate did not concur in the House amendments. After three conference committees were appointed and two conference committee reports were rejected, the bill passed the House on April 11, 1991, in exactly the form as it had passed the Senate. Unfortunately, the bill was incorrectly enrolled to include conference committee amendments that were not included in the final conference committee report. The incorrectly enrolled bill was signed by the President of the Senate and the Speaker of the House and delivered to the Governor on Friday, April 12, 1991. The incorrectly enrolled bill was signed by the Governor on Tuesday, April 16, and filed with the Secretary of State on Thursday, April 18.

When an error in the enrolled bill was discovered and after consulting with the Governor's staff, the Legislative Council staff provided a corrected copy of the enrolled bill to the Governor's office and to the Secretary of State's office. The 1991 Session Laws and the supplement to the North Dakota Century Code were published using the corrected version of

the affected law, NDCC Section 54-06-14.

On July 26, 1991, the Attorney General issued an opinion that the corrected enrolled bill was not constitutionally adopted and was void.

### **Journal Entry Rule v. Enrolled Bill Rule**

In determining the validity of an enrolled bill that conflicts with entries in the journal, states have generally followed either the enrolled bill rule or the journal entry rule. The enrolled bill rule provides that the enrolled bill is conclusively the law and no evidence to the contrary may be considered. The journal entry rule provides that an enrolled bill will be presumed valid but the presumption is not conclusive and may be overcome by the evidence from the journals.

In 1919 the North Dakota Supreme Court, in **State v. Schultz**, adopted the journal entry rule. In 1927 the court reaffirmed the journal entry rule in **State ex rel. Sorlie v. Steen**, and these cases had been cited in Attorney General opinions issued before the 1991 opinion.

The committee reviewed North Dakota Supreme Court opinions upholding the fundamental principle in statutory construction that courts do their utmost to determine and uphold the intent of the Legislative Assembly. The committee also reviewed North Dakota Supreme Court decisions stating that an act of the Legislative Assembly is presumed to be valid, any doubt as to the constitutionality of an act must, where possible, be resolved in favor of constitutionality, and a statute will not be declared void by the courts unless the invalidity is beyond reasonable doubt.

The committee discussed problems that could arise if enactments of the Legislative Assembly which have been incorrectly enrolled cannot be corrected. Concern was expressed over the possibility of an application of the 1991 Attorney General's opinion to bills that were incorrectly enrolled in the past, but were corrected according to the line of authority established since the 1919 Supreme Court decision adopting the journal entry rule.

As a result of the concern over the possible ramifications of the Attorney General's opinion, the Legislative Assembly in special session, November 4-8, 1991, enacted Senate Bill No. 2600 to reenact NDCC Section 54-06-14 as it was amended by the 52nd Legislative Assembly, compiled in the 1991 Session Laws, and printed in the 1991 supplement to the North Dakota Century Code.

### **Recommended Bill**

The committee recommends House Bill No. 1049 to provide that a bill or resolution passed by the Senate and House of Representatives as evidenced by the journals of the Senate and House is presumed to be the bill or resolution signed by the presiding officers, presented to the Governor, and filed with the Secretary of State. If there is a difference between versions of a bill, the Legislative Council staff is to direct the publisher of the code to publish the law as evidenced by the journals. The law as published must be presumed valid until determined otherwise by an appropriate court. The bill is intended to address the situation when a mistake in an enrolled measure is corrected to reflect the text as amended and approved

by each house of the Legislative Assembly as contained and recorded in the journals. The presumption of validity is intended to reinforce the role of the judiciary in determining whether statutes are invalid. The presumption may be contravened by evidence but that decision may only be by a court.

## **LONG-DISTANCE TELEPHONE POLICY APPLICABLE TO LEGISLATORS**

### **Background**

The Legislative Council directed the committee to develop a policy on long-distance calls by legislators. This directive resulted from a report to the Legislative Council describing problems resulting from legislators calling the Legislative Council office through the inservice WATS line and asking the staff to transfer the call to an outgoing interstate WATS line. The Legislative Council prohibited the practice of transferring calls to an outgoing interstate WATS line until another policy is developed and referred the issue to the Legislative Management Committee for study.

### **Committee Considerations**

The committee reviewed the existing policies applicable to long-distance calls by legislators. During a legislative session, legislators have access to in-state WATS lines through telephones on the floor of each chamber as well as in the legislative study rooms. During the interim, members of the Legislative Council as well as chairmen of interim committees receive credit cards for use in making telephone calls related to legislative service.

During the interim, an incoming WATS line is provided for use by legislators in calling the State Capitol. As of September 1, 1992, the responsibility for answering the incoming WATS line was transferred from the switchboard operator at the Information Services Division to the Legislative Council office. Under current telephone service provided by the Information Services Division, 1-800 service is provided at a cost of 14 cents per minute. Calls placed through state credit cards cost 15 cents per minute during the day and 12.6 cents per minute during the evening. There is also a 1.29 cents per call surcharge.

The committee discussed two alternatives for providing for long-distance calls by legislators—issue credit cards to all members of the Legislative Assembly and cancel the incoming WATS line, or allow legislators to voucher telephone expenses in the same manner that other state employees voucher expenses for legitimate state business. The committee also discussed the circumstances affecting use of long-distance calls by legislators in talking with constituents, i.e., calls within an urban district may not result in a long-distance charge but calls to most constituents within a rural district may result in long-distance charges. The committee also discussed the difficulties in distinguishing between calls related to legislative service and calls related to political matters.

### **Recommendation**

The committee recommends that the Legislative Council adopt a policy that prohibits the practice of

transferring calls to any outgoing WATS line, regardless of whether the line is an intrastate or interstate WATS line.

## **SESSION ARRANGEMENTS Legislator's Automated Work Station (LAWS) System**

During the 1985-86 interim, a proposal was made to the Legislative Procedure and Arrangements Committee with respect to the possibility of replacing legislators' bill racks with personal computer terminals. Representatives of IBM spent a day in each chamber during the 1987 session, interviewed legislators, and sat with legislators on the floor. During this review, it was found that legislators use bill racks to place notes on bills, note votes taken, add personal notes, and place telephone messages with the bills.

During the 1987-88 interim, the Legislative Procedure and Arrangements Committee approved plans for development of the LAWS system on a pilot project basis for the 1989 session. The system contained four basic components—bill status, committee hearings, daily calendar, and personal services (which included telephone messages received by the telephone attendants). Four personal computer terminals were placed in each chamber during the 1989 session. The 1989 Annual Report of IBM referred to this system as an innovative use of computer equipment to enable legislators to track bills, revisions, and amendments more efficiently.

During the 1989-90 interim, the Legislative Management Committee approved enhancements of the LAWS system to allow display of the full text of a bill page on one screen; access to individual roll call votes from almost every screen; faster access to move about the system; display of the current text of measures being considered on the calendar through use of the voting system, with the legislator merely pressing a designated key; computer searches of the Century Code; use of electronic mail to send messages to other legislators with work stations; word processing capability; spreadsheet capability; and storage of telephone messages in caller sequence. For the 1991 session the committee approved expansion of the system to 24 work stations in the chambers, with 16 in the House and eight in the Senate.

The committee reviewed the results of a questionnaire given to all legislators who participated in the 1991 LAWS system. All legislators who participated in the system during the 1991 session thought the system should be continued and expanded to include more members. All participants requested participation in the system during the 1993 session. In continuing the policy that the LAWS system should be implemented on a controlled growth basis, with usage voluntary and participation assigned through the caucuses, the committee approved expansion of the system to 50 work stations in the chambers, with 33 in the House and 17 in the Senate, as well as a terminal and printer in each of the Majority and Minority Leaders' offices.

### **Bill Summaries**

The committee reviewed a suggestion by the Secretary of the Senate which was to review the daily

documents that are printed and distributed to legislators and the desk force and, in particular, whether the bill summaries should be eliminated because they appear not to be used by anyone. The committee discussed the fact that many bill summaries are out of date by the time of distribution and a substantial amount of staff time goes into the preparation of bill summaries. The committee determined that elimination of the bill summaries would help in reducing a very heavy workload in the evenings. The committee recommends that the Legislative Council staff no longer provide bill summaries for the Legislative Assembly nor provide bill summaries on a regular basis to individual legislators.

### **Resolution Numbers**

The committee reviewed a suggestion that the numbering of House and Senate resolutions and memorial resolutions be consistent with the numbering of concurrent resolutions. The proposal was to assist in the development of the enhanced bill drafting and journal reporting system being developed for use by the Legislative Council and the Legislative Assembly. The committee approved the proposal for four-digit numbering of all types of resolutions, e.g., numbering would start at 3001 for House concurrent resolutions, 4001 for Senate concurrent resolutions, 5001 for House resolutions, 6001 for Senate resolutions, 7001 for House memorial resolutions, and 8001 for Senate memorial resolutions, and, if necessary, 7501 for House concurrent memorial resolutions and 8501 for Senate concurrent memorial resolutions.

### **Journal Distribution Policy**

The committee approved continuation of the policy initiated in 1985 to the effect that legislators would not be asked to fill out a list of persons who are to receive daily journals but that legislators upon request may have daily journals sent to as many as 15 persons.

### **Incoming WATS Lines**

The committee reviewed information on the usage of the six incoming WATS lines provided during the 1991 session for residents in the state to contact legislators or obtain information concerning legislative proposals. The information indicated six lines are adequate for handling the volume of calls received by the telephone attendants. The information also indicated that calls were received from outside the state. The committee recommends no changes in the incoming WATS line service, other than restricting the service to residents in the state as much as practicable.

### **Legislative Internship Program**

Since 1969 the Legislative Assembly has sponsored a legislative internship program in cooperation with the law and graduate schools at the University of North Dakota and the graduate school at North Dakota State University. The legislative internship program has provided the Legislative Assembly with the assistance of law school students and graduate school students for a variety of tasks, and has provided the students with a valuable educational experience. The allocation of interns among the three

programs is six from the School of Law, four from the Department of Political Science at the University of North Dakota, and six from the graduate program at North Dakota State University. Ten interns are assigned to committees, one is assigned to each of the four caucuses, and two are assigned to the Legislative Council office.

As a result of concerns with respect to possible problems with accreditation of the law school by the American Bar Association if law school students receive compensation for participating in the internship program, the program was converted to a fellowship program in 1989. An intern who completes the regular term of internship receives a stipend and an intern who continues service beyond this regular term receives compensation for additional service.

The committee reviewed the program and approved its continuation for the 1993 Legislative Assembly. The interns will receive training and orientation by the Legislative Council staff and will be given their assignments prior to the session.

### **Legislative Tour Guide Program**

For the past eight legislative sessions there has been a tour guide program to coordinate tours of the Legislative Assembly by high school groups. The tour guide program is extensively used by high school groups during the session, and other groups have been placed on the tour schedule at their request. Since 1987 two tour guides have been hired due to the heavy workload in scheduling tour groups. The committee approved the continuation of the legislative tour guide program for the 1993 session.

### **Appropriations Bills**

The committee received a request from the Office of Management and Budget relating to the preparation of appropriations bills in time for the organizational session. Under NDCC Section 54-44.1-07 budget data information prescribed by NDCC Section 54-44.1-06 is to be presented to the Legislative Assembly at the organizational session. Under Section 54-44.1-06 budget data information includes the appropriations bills embodying the budget data and recommendations of the Governor for appropriations for the next biennium. The Office of Management and Budget prepares the appropriations bills, but the Office of Management and Budget reported to the committee that the office could not meet the organizational session deadline for the preparation of bills. The committee recommends the Legislative Council staff be requested to receive appropriations bills implementing the Governor's budget for prefilming after the statutory deadline but by December 18.

### **Session Employment Coordinators**

The committee approved the hiring of personnel representing the two major political parties to receive and coordinate the handling of applications for session employment.

### **Session Employee Orientation and Training**

The committee considered whether session employees should be provided orientation and training similar to that provided immediately before the con-

vening of the 1991 Legislative Assembly. Committee members expressed support for training that would further enhance the ability of the Legislative Assembly to start the legislative process as early as possible.

The committee authorized the Legislative Council staff to conduct training sessions for the bill clerks, chief telephone attendant, information desk attendants, committee clerks, desk reporters, desk pages, and the chief stenographer and payroll clerks at various times during the week preceding the legislative session. The committee recommends that the Employment Committees hire session employees to begin work at various times before the convening of the Legislative Assembly, depending on the nature of an employee's duties and the training recommended for the employee. The recommended starting dates range from the fourth Monday in November to the first day of the session, depending on the employee positions.

### **Bill and Journal Room Employee**

Bills may be prefiled before the convening of the Legislative Assembly in January. Prefiled bills are delivered to the printer and copies are then printed and placed in the joint bill and journal room. Several requests are made for copies of prefiled bills, because hearings on these bills generally are scheduled early in the legislative session. The Legislative Procedure and Arrangements Committee first authorized the Employment Committees to hire an individual to organize the bill room and distribute bills prior to the convening of the 1979 Legislative Assembly. The committee reviewed the usefulness of this practice and authorized the Employment Committees to hire an individual to organize the joint bill and journal room, dispose of bills and journals remaining from the 1991 session, and distribute bills prior to the convening of the 1993 Legislative Assembly.

### **Legislator Supplies**

The committee reviewed proposals to provide legislators' stationery, including alternate bids using recycled paper. The committee recommended acceptance of the lowest bid, which was for stationery consisting of recycled paper.

The committee approved continuation of the policy of providing letter files to legislators.

### **Legislative Expense Reimbursement Policy**

Section 26 of Article XI of the Constitution of North Dakota provides that payment for necessary expenses for legislators may not exceed that allowed for other state employees. The 1985 Legislative Assembly authorized legislators to receive up to \$600 per month as reimbursement for lodging. Because of the constitutional provision, reimbursement for expenses during the 1985 session was made pursuant to the policies established by the Office of Management and Budget with respect to state employees who rent apartments while away from their usual work locations for extended periods of time. Several questions arose after the 1985 session as to the reimbursement of items such as utilities, furniture rental, and repairs. The Legislative Council adopted the position that legislators should be reimbursed for what is identified as

lodging expenses, including utilities and furniture rentals, and referred the expense reimbursement issue to the Legislative Procedure and Arrangements Committee for resolution.

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted a policy that allowed the following items as reimbursable lodging expenses during a legislative session: utilities - electricity and heat, water (including garbage collection and sewer charges), basic telephone service, and telephone installation charges; furniture - rental of furniture and appliances and transit charges for moving rental furniture and appliances; and repairs for damage occurring during the legislator's tenancy - repairs to structure, plumbing or electrical repairs, and repairs to furniture and appliances. This policy was followed in determining reimbursable expenses during the 1985 through the 1991 sessions. The committee adopted this policy, excluding repairs for damage occurring during the legislator's tenancy, as the policy to be applied for determining reimbursable lodging expenses during the 1993 session.

### **Impact of Americans with Disabilities Act**

The committee received a report from the Facility Management Division of the Office of Management and Budget concerning access to the State Capitol pursuant to the federal Americans with Disabilities Act. The committee reviewed plans to remodel the west entrance to the Capitol due to the requirement that entrances near parking for the handicapped must be accessible to the handicapped. There are six handicapped parking spaces near the west entrance. Of special concern to the committee was the impact of the remodeling on the brass doors of the west entrance. The committee reviewed options of whether the innermost set of brass doors should be retained but locked open during business hours, retained with powerassisted openers, or removed due to the cost of providing assisted openers for the brass doors. The committee recommended that the innermost set of brass doors of the west entrance to the State Capitol be retained and that the doors be locked open during regular business hours.

The committee also reviewed proposals for remodeling the doorways to legislative committee rooms. The handicapped accessibility requirement is for a door of at least 32 inches. The doorways to most of the committee rooms have double doors, each of which is from 27 to 30 inches wide. With respect to the rooms having double doors, a preliminary proposal presented to the committee was that a 36-inch door be installed, with a side glass panel. Before any final decision is made as to the doorways, the proposals will be reviewed during the 1993-94 interim. Committee members suggested that current doors have been adequate for accessibility, and if the need arises, the second of a set of double doors can be opened for accessibility purposes.

The committee determined that a presentation on the impact of the Americans with Disabilities Act on the employment practices, legislative services and committee operations should be presented during the organizational session as a scheduled item on the agenda. The presentation is intended to inform legislators, especially committee chairmen and members

of the Employment Committees of the requirements of the Act.

The committee approved the installation of a separate incoming WATS line to the telephone room and the purchase of a telecommunications device for the deaf (TDD) for that line. During the legislative session this will allow hearing-impaired individuals to call the telephone room for information as do nonhearing-impaired individuals through the other incoming WATS lines. During the interim, the Legislative Council will install the telecommunications device for the deaf on a regular telephone line as a means of providing communication services for hearing-impaired individuals.

### **Organizational Session Agenda**

The committee approved a tentative agenda for the 1992 organizational session which, although based on the agenda for the 1990 organizational session, contains new items. The agenda includes a time period for a joint session for the informal receipt of the state of the state address by the retiring Governor and a time period for a presentation on the impact of the federal Americans with Disabilities Act on legislative operations.

### **Television Coverage**

The committee reviewed a proposal by Meredith Cable for live television coverage of the 1993 Legislative Assembly. During the 1989 session, Bismarck-Mandan Cable TV engineered and delivered a live and tape-delayed evening presentation of the North Dakota Senate. A camera was positioned on alternating sides of the gallery, and viewers were given the opportunity to observe the legislative process. This service was available to approximately 8,000 Bismarck-Mandan Cable TV subscribers who had a secondary level of service known as the variety tier. During the 1991 session, Bismarck-Mandan Cable TV, through Community Access Television, a non-profit corporation responsible for programming the public access channel of Bismarck-Mandan Cable TV, provided legislative coverage on a basic tier channel. By changing channels, more than 20,000 subscribers had access to legislative coverage. The coverage was also expanded to include the North Dakota House of Representatives on alternating weeks. The committee authorized Meredith Cable to continue the coverage of the 1993 Legislative Assembly under a similar arrangement, which would allow more than 22,000 subscribing households, businesses, and schools to have access to legislative coverage.

### **Doctor of the Day Program**

The North Dakota Medical Association expressed willingness to continue its program of making medical services available to the Legislative Assembly. The committee invited the association to continue the doctor of the day program during the 1993 session.

### **Chaplaincy Program**

In cooperation with the Bismarck Ministerial Association, the House and Senate have chaplains open daily sessions with a prayer. The committee reviewed the procedure in effect since 1985 which gives legislators until the end of December to schedule out-of-town

clergymen to deliver prayers during the session. The committee invited the Bismarck Ministerial Association to continue the program during the 1993 session. The committee also requested the Legislative Council staff to notify all legislators prior to the convening of the session that they have until December 31, 1992, to schedule out-of-town clergymen to deliver daily prayers during the 1993 session.

### **State of the State Address**

During the 1991 session, the House and Senate convened in joint session at 1:45 p.m. on the first legislative day and the Governor presented his state of the state address beginning at 2:30 p.m. The committee authorized the Legislative Council staff to contact the Governor for presentation of the state of the state address under a similar schedule on the first legislative day of the 1993 session.

### **State of the Judiciary Address**

The committee authorized the Legislative Council staff to make plans with the Chief Justice of the North Dakota Supreme Court for the state of the judiciary address on the second legislative day of the 1993 session.

### **Tribal Address**

During the 1983-84, 1985-86, and 1987-88 interims, representatives of the Indian tribes in North Dakota requested permission to appear before the Legislative Assembly to describe from their perspective the current status of the relationship between the tribes and the state of North Dakota. As a result of invitations extended by the Legislative Procedure and Arrangements and Legislative Management Committees, a spokesman from the tribes addressed each house of the Legislative Assembly during the first week of the 1985 through the 1991 sessions.

The committee authorized the extension of an invitation to representatives of the Indian tribes to make a presentation to each house of the 1993 Legislative Assembly on a legislative day selected by the legislative leadership, similar to the presentation made during the 1991 session.

### **Legislative Compensation Commission Report**

The committee requested that the report of the Legislative Compensation Commission, if the commission is making recommendations on legislative compensation, be presented orally by the chairman of the commission to each house of the 1993 Legislative Assembly on a legislative day selected by the legislative leadership. If the report does not contain recommendations, the committee requested that a written report be submitted to the presiding officers in lieu of an oral report.

### **SPECIAL SESSION ARRANGEMENTS**

The Governor issued Executive Order No. 1991-5 on September 9, 1991, convening the Legislative Assembly into special session on November 4, 1991, "in order to accomplish constitutionally required redistricting and such other emergency matters as may be essential to the operation of the State of North Dakota."

The committee reviewed four areas for consideration for the special session—legislative rules, session employees, legislative space, and printed materials and computer access.

### **Legislative Rules**

The committee reviewed legislative rules amendments adopted during the 1986 special session and the 1981 reconvened session.

During the 1986 special session, the Senate, House, and Joint rules were amended to allow a bill to be considered on the same day it is reported from committee, to allow a bill to be transmitted to the other house on the same day it is approved, and to provide that bills introduced must go through the Delayed Bills Committees. The Senate rules were also amended to require unanimous consent to amend measures from the floor, to delete the prohibition on considering amendments until copies have been distributed to members, and to delete the requirement for a two-thirds vote by the members-elect to suspend the prohibition.

During the 1981 reconvened session, which met primarily to consider matters of legislative redistricting, the Senate and House of Representatives adopted a joint rule establishing a joint standing committee on legislative redistricting. The House also adopted a temporary rule revising the membership of the House Delayed Bills Committee.

The committee determined that rules amendments similar to the 1981 and 1986 rules amendments should be made to the legislative rules for the 1991 special session.

The committee recommends amendment of Senate and House Rules 318(4), 336, and 601 and Joint Rule 206 to authorize a measure to be considered on the same day it was reported from committee or placed on the consent calendar. Thus, the timeframe for consideration of a measure is shortened from the day after a measure is reported to the same day a measure is reported from committee or placed on the consent calendar. However, a measure may not have its second reading on the same day of its first reading.

The committee recommends amendment of Senate and House Rules 345 to authorize a measure to be transmitted to the other house immediately after approval, unless a member gives notice of intention to reconsider. If notice is given, the measure cannot be transmitted until the end of that day. Without this amendment, a measure must be retained until the end of the next legislative day.

The committee recommends amendment of Senate and House Rules 401(1), 402(1) and (2), and 403, and Joint Rule 208 to provide that bills and resolutions introduced, other than bills introduced by the Legislative Council, must go through the Delayed Bills Committees. Committee members expressed concern about items that may be considered during the special session. As pointed out by the Governor in his executive order convening the Legislative Assembly into special session, the special session is called in order to accomplish redistricting and such other emergency matters as may be essential to the operation of the state. By requiring measures to be introduced through the Delayed Bills Committees, bills and resolutions could be appropriately screened to assure promotion

of these objectives. As a means to allow preprinting of measures recognized as dealing primarily with legislative redistricting and emergency matters, as first determined by interim committees of the Legislative Council, bills and resolutions recommended by the Legislative Council would not be subjected to approval by the Delayed Bills Committees. These bills and resolutions would be approved for introduction, numbered, and printed so as to be available for distribution on the first day of the special session.

The committee recommends amendment of Senate and House Rules 504 to eliminate specific meeting days for committees. Although meetings may be called at times and on days as deemed necessary, the specific listing of the days that three-day and two-day committees may meet could cause misconceptions if such committees met on other than regularly scheduled days.

The committee recommends amendment of Joint Rule 202 to allow either house to reconsider receding before a conference is called. Without the amendment, reconsideration could not be made until the next legislative day.

The committee recommends creation of Joint Rule 304 to establish a Joint Committee on Legislative Redistricting composed of 16 members, eight from the House and eight from the Senate. The intent of this recommendation is to provide for a joint committee that consists of the same members as the interim Legislative Redistricting and Elections Committee.

The committee recommends amendment of Joint Rule 501(4) to require the return of a fiscal note within one day of the request instead of five days as required during regular sessions. This recommendation is made in recognition of the shortened timeframes for considering bills and resolutions during the special session.

The committee recommends amendment of Senate Rules 318(4)(f) and 601(2)(b) to authorize action to be taken on an amendment without requiring a copy of the amendment to be distributed to each member. A similar rules change was made during the 1986 special session as a means to continue legislative action without unnecessary delay.

### **Session Employees**

The committee reviewed the employee positions filled during the 1981 reconvened and the 1986 special sessions. During the 1981 reconvened session, 14 Senate employees and 18 House employees were authorized, as well as three janitors. During the 1986 special session, 17 Senate employees and 18 House employees were authorized. The 1986 special session was somewhat unique in that it was convened during the 1986 organizational session. Thus, some employee positions overlapped employee positions normally filled during the organizational session.

The committee recommends that the House Employment Committee employ not more than 18 House employees and the Senate Employment Committee employ not more than 17 Senate employees for the 1991 special session, with the positions left to the discretion of the Employment Committees. The committee determined that specifying employee positions to be filled during the special session may be unduly restrictive because the subject matter and number of



bills or resolutions to be considered during the special session is unknown.

### **Legislative Space**

During the time between legislative sessions, the space in the Capitol used by the Legislative Assembly may be used with the authorization of the Legislative Council, or its designee. The Legislative Council has designated the director of the Legislative Council to authorize the use of legislative space during the interim. The general practice has been to authorize executive agencies to use certain space in the legislative wing, as long as that use does not conflict with legislative use. After the 1991 regular session, the Department of Human Services was authorized to locate employees in the steno area as well as in the House conference room.

The committee recommends that executive branch agencies in the steno area and House conference room be allowed to retain use of that space during the special legislative session.

The committee recommends that the Joint Committee on Legislative Redistricting hold its first hearing in the Brynhild Haugland Room, after which the committee hold its meetings in the Roughrider Room. The committee recommends that the Legislative Council's consultant on legislative redistricting be located in the committee clerk area of the Roughrider Room. The Roughrider Room provides the largest meeting room and a separate office area. Use of this area by the consultant will assist the committee in its work.

### **Printed Materials and Computer Access**

The Legislative Council is in the midst of converting its bill drafting system to a modern system, and enhancing existing systems used during a legislative session. Thus, certain legislative documents and computer systems will not be available during the special session.

The committee recommends that daily calendars not contain the "addendum" describing the action on bills before the appropriate house. The addendum is prepared through the on-line calendar system. This system is being revised and is unavailable during the special session. The committee recommends that the desk forces prepare the daily calendars through use of typewriters.

The committee recommends that committee hearing schedules not be printed. Unlike regular sessions when hearing schedules are prepared the week prior to hearings, it is anticipated hearings will be called on short notice. Also, the committee hearing system is being revised and is unavailable during the special session. The committee recommends that information on committee hearings be provided through the monitors on the ground floor and at the information kiosk.

The committee recommends that the on-line bill status system be available only on a limited basis. The system will be available to agencies in the Capitol complex that had access to the system during the 1991 regular session, but will not be available to entities outside the Capitol complex. Bill status information on the bills that are anticipated to be introduced can be obtained through the information

kiosk at little additional cost.

The committee recommends that terminals providing information to individual legislators on the floor of each chamber through the Legislator's Automated Work Station system not be installed during the special session. The terminals used by legislators during the 1991 regular session were leased and are no longer available.

## **LEGISLATIVE INFORMATION SERVICES**

### **Legislative Document Library**

#### **Distribution Program**

Starting with the 1983 session, the Legislative Assembly has provided bills and resolutions, journals, and bill status reports to academic, special, and public libraries throughout the state which request this service. The program consists of sending on a weekly basis, through United Parcel Service (UPS), copies of introduced bills and resolutions, daily journals, and bill status reports. In 1983, 30 libraries received the documents; in 1985, 46 libraries received the documents; in 1987, 45 libraries received the documents; in 1989, 51 libraries received the documents; and in 1991, 21 libraries received the documents. During the 1989-90 interim, the Legislative Management Committee reviewed the cost of providing this service and determined that participating libraries should pay the approximate cost of printing their bill status reports (\$130 per set) and the Legislative Assembly should continue to absorb the cost of the other documents plus the cost of shipping the materials. The cost of printing a set of the 1991 bill status reports was \$152. The committee approved continuation of the program for the 1993 Legislative Assembly, with the requirement that a participating library pay \$150 to subscribe to the program, and if the subscription is after the deadline for subscribing, a \$25 late subscription fee.

#### **On-Line Bill Status System Access**

The bill status system began in 1969 as a Legislative Council computerized in-house operation to provide day-old information concerning the progress of bills and resolutions through the legislative process. The system has grown to an on-line system providing up-to-the-minute information concerning the status of bills and resolutions for use by legislative personnel and outside users. Although most outside users are state agencies, a number of entities that are not state agencies or institutions have gained access through arrangements with the Legislative Council and the Information Services Division of the Office of Management and Budget. In 1991, 52 entities other than state agencies were authorized access. Those users paid a \$150 subscription fee and the direct and indirect costs of providing access and obtaining usage.

The committee discussed the availability of on-line access to entities outside the legislative branch. The committee discovered that some subscribers had made arrangements for downloading information and making that information available to others, either free or for a fee. The committee was also informed that inquiries had been made of the Legislative Council as to whether there was a policy relating to resale of on-line access by a subscriber. Concern was expressed at the potential for disrupting the system through ar-

rangements not known by the Legislative Council staff or the Information Services Division. The committee also expressed concern over the costs incurred by a state agency or institution that provides legislative information taken from the on-line bill status system without recovering the costs of providing that information.

The committee determined that no on-line user should be allowed to provide on-line access to others who are not subscribers, without the permission of the Legislative Council staff. The committee also determined that no on-line user should be allowed to download information obtained from the on-line system and provide on-line access to that information without notice to the Legislative Council staff. The committee also determined that no on-line access should be provided to a state agency or institution for the purpose of providing or reselling that information to others unless that state agency or institution provides or resells that information for a fee that recovers the costs incurred by the agency or institution to provide that service.

For access to the bill status system during the 1993 legislative session, a fee of \$200 has been established as a subscription fee for any subscriber that is not a state agency or institution, with a monthly access charge of \$33 and a computer usage charge of 65 cents per CPU second.

#### **Bill Status Report Subscription Fee**

When the bill status system began in 1969, the system consisted of printed reports. During the 1989 session, the Legislative Assembly printed over 135 copies of the bill status report for delivery to state libraries participating in the legislative document library distribution program, to various offices in the legislative branch, and to various state agencies. For the 1991 Legislative Assembly, state agencies that requested printed bill status reports received them from the Information Services Division (at the agencies' cost). During the 1989 legislative session, the bill status reports were distributed by employees of the bill and journal room and the day-old reports were picked up and distributed to persons requesting them on a first-come, first-served basis. Because the number of bill status reports printed by the Legislative Assembly was substantially reduced in 1991, extra copies were not available for distribution to parties who had previously received copies on a first-come, first-served basis, without the appearance of "favoritism" to the few who might have received the limited number of day-old copies. Thus, a fee of \$130 was established for any person to subscribe to the printed bill status reports. Twelve entities subscribed to the printed bill status reports, which were distributed through the bill and journal room. The committee determined that printed bill status reports should continue to be made available through the bill and journal room only to those who subscribe to the 1993 bill status report and pay a \$150 subscription fee, \$250 if mailed.

#### **Photocopied Bill and Resolution Subscription Fee**

Under Senate and House Rules 404, any statewide organization or association may be provided a copy of

each introduced bill or resolution upon payment of a subscription fee established by the committee. The committee reviewed the cost of this service and established a fee of \$550 for the 1993 session.

#### **Bill, Resolution, and Journal Subscription Fees**

The committee reviewed the practice of providing copies of bills, resolutions, and journals without charge. The committee compared the distribution of documents by the Legislative Assembly with the distribution of legislative documents by South Dakota, Montana, and Wyoming. Those states impose a variety of charges for picking up or mailing legislative documents.

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted the policy that the joint bill and journal room should mail a small number of bills and resolutions at no charge to a requester, but if the request is for a large number or for all of the bills and resolutions introduced, the requester is to pay the postage. This policy was followed during the 1987, 1989, and 1991 sessions. The committee reviewed information on the cost of printing and of mailing various legislative documents.

The committee determined that fees should be established to cover the cost of printing the legislative documents involved and, if requested, the cost of mailing certain legislative documents. The committee determined that state agencies and institutions should not be charged the fees, nor should representatives of the media as determined under Joint Rule 802. The committee also determined that the distinction between receiving copies of a limited number of bills and resolutions and receiving a copy of each bill and resolution introduced and printed or reprinted should be continued.

The committee established the following fees with respect to receiving a copy of every bill and resolution introduced and printed or reprinted and a copy of the daily journal of each house: for a set of bills and resolutions - \$90, or \$190 if mailed; and for a set of daily journals of the Senate and House - \$30, or \$130 if mailed. Upon request, a state agency, state institution, or representative of the media as determined under Joint Rule 802 may pick up from the joint bill and journal room a set of bills and resolutions as introduced and printed or reprinted and a set of the daily journals of the Senate and House, without paying the subscription fees for a set of the bills, resolutions, and daily journals.

#### **Committee Hearing Schedule and Daily Calendar Subscription Fees**

The committee reviewed the practice of making committee hearing schedules and daily calendars available at no charge. The committee determined these documents should continue to be made available at no charge. The committee determined that if a request is received for the mailing of daily calendars or committee hearing schedules, a fee should be imposed to cover the cost of postage. The committee established a subscription fee of \$50 for mailing a set of daily calendars of the Senate and House and a subscription fee of \$25 for mailing a set of the weekly hearing schedules for Senate and House committees.

## **CONTRACTS FOR PRINTING OF LEGISLATIVE DOCUMENTS**

### **Background**

Under NDCC Section 46-02-04, the Legislative Council is authorized to determine the contents of contracts for printing legislative bills, resolutions, and journals. Requests for bids for the printing of legislative bills, resolutions, and journals are prepared by the State Purchasing Division, usually in September of the year preceding the legislative session.

### **Bills and Resolutions Contract**

Under Joint Rule 603, 800 copies of each bill and 500 copies of each resolution must be printed. The contract for printing bills and resolutions has provided that each bill and resolution must have two large tear-out holes. This requirement dates to the time when large bill books were used, rather than the bill racks used in recent sessions. The requirement for two large tear-out holes in each bill and resolution was removed from the contract for printing bills and resolutions.

### **Daily Journals Contract**

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee approved the reduction in the number of daily journals to 2,000 for each chamber, rather than 2,300 House journals and 2,200 Senate journals. During the 1987 session, the number was reduced to 1,800 and as the result of a suggestion to start with 1,800 copies, the contract to print the 1989 journals provided for 1,800 copies of the daily journals of each house. As the result of a suggestion during the 1991 session by the chief bill and journal room clerk, the contract to print the 1993 journals provides for 1,200 copies of the daily journals of each house. As in the past, the contract allows the total number of daily journals to be varied during the session, depending on need.

### **Recycled Paper Alternative**

North Dakota Century Code Section 54-44.4-08 requires varying percentages of the total volume of paper and paper products purchased for state agencies to contain at least 25 percent recycled material, beginning July 1, 1993. In an attempt to promote the use of recycled materials before the statutory requirement takes effect, the requests for bids for the printing of bills, resolutions, and journals requested bidders to include alternate bids on the use of recycled paper. The committee reviewed the bids received and recommended that the lowest bids for the printing of legislative documents be accepted. This resulted in the award of contracts for the use of nonrecycled paper for legislative bills, resolutions, and journals.

## **APPROPRIATION FOR IMPROVEMENTS TO THE LEGISLATIVE WING**

### **Background**

The major legislative wing renovation project dates back to the 1977 Legislative Assembly, which authorized the construction of the Judicial Wing-State

Office Building. Over the years various projects have been undertaken to renovate the legislative wing, and during the last interim projects included approval of proposals for thematic displays for the (Theodore) Roosevelt (National) Park Room, Fort Union Room, Peace Garden Room, Fort Totten Room, Red River Room, Roughrider Room, Sakakawea Room, Lewis and Clark Room, and Fort Lincoln Room; enhancement of the voting systems; installation of new microphones with flexible stems in the Roughrider Room; upgrade of the existing microphone coil cords, plugs, and jacks in both chambers; installation of chamber wiring to allow a computer terminal at each legislator's desk; and installation of shelving in the joint supply room to provide for mailboxes for legislators.

### **Committee Room Alternatives**

During the 1991 legislative session, suggestions were made with respect to alternatives for additional committee room areas on the ground floor. The suggestions were to no longer use the House Conference Room as a committee room, make the press area into a committee room, and divide the Pioneer Room into two committee rooms.

The committee reviewed alternatives to divide the Sakakawea Room into two committee rooms, one of which would provide room for eight committee members and six spectators and one of which would provide room for 10 committee members and five spectators; to move the press area to the press studio; to relocate the press area to the House Conference Room; to convert the press area to a committee room which would provide room for 10 committee members and 12 spectators; to remodel the women's restroom on the ground floor so as to consolidate the large lounge area and the Senate Appropriations Committee clerk area to provide a committee room for 10 committee members and 23 spectators; and to divide the Pioneer Room into an eastern room and a western room by use of a north-south wall.

The committee also received a request for use of the Pioneer Room by the Tax Department to process income tax returns during the legislative session.

### **Recommendation**

The committee recommends that the legislative leadership authorize the use of the Pioneer Room by the State Tax Department as of April 1 of odd-numbered years. The committee makes no further recommendation concerning any major renovation for alternate committee room space.

## **MEMORIAL HALL GUIDELINES**

North Dakota Century Code Section 54-35-02(8) provides the Legislative Council with the power and duty to control the use of the legislative chambers and permanent displays in Memorial Hall. This authority has customarily been delegated to the Legislative Management Committee. Under guidelines adopted in 1981, any permanent display in Memorial Hall is to be reviewed annually. In 1982 the committee approved relocating the Liberty Bell to the Heritage Center, and in 1984 the committee approved relocating two statues to the Heritage Center. Since the removal of the statues in 1984, Memorial Hall does not contain any permanent display.

# LEGISLATIVE REDISTRICTING AND ELECTIONS COMMITTEE

The Legislative Redistricting and Elections Committee was initially assigned two studies. House Concurrent Resolution No. 3026 directed a study of legislative reapportionment and development of a legislative reapportionment plan or plans for use in the 1992 primary election. Senate Concurrent Resolution No. 4001 directed a study of North Dakota election laws, including the laws relating to the financing of election campaigns and the reporting of election campaign expenditures.

Senate Bill No. 2597, enacted by the Legislative Assembly at the November 1991 special session, directed the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

Committee members were Senators Jim Yockim (Chairman), William G. Goetz, Ray Holmberg, Aaron Krauter, Don Moore, Joseph A. Satrom, Bryce Streibel, and Dan Wogsland and Representatives Bruce E. Anderson, Judy L. DeMers, William E. Kretschmar, Rod Larson, Kit Scherber, Scott B. Stofferahn, Kenneth N. Thompson, and Mike Timm.

The committee submitted the "LEGISLATIVE APPORTIONMENT STUDY" portion of this report to the Legislative Council at the special meeting of the Council in October 1991. The Council accepted the report for submission to the 52nd Legislative Assembly meeting in special session in November 1991. The committee submitted the remainder of the report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted that report for submission to the 53rd Legislative Assembly.

## LEGISLATIVE APPORTIONMENT STUDY

House Concurrent Resolution No. 3026 (1991) directed the Legislative Council to study legislative reapportionment and develop a legislative reapportionment plan or plans for use in the 1992 primary election. The resolution encouraged the Legislative Council to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts must be compact and of contiguous territory except as is necessary to preserve county and city boundaries as legislative district boundary lines and so far as is practicable to preserve current legislative district boundaries.
2. Legislative districts may have a population variance from the largest to the smallest in population not to exceed nine percent of the population of the ideal district except as is necessary to preserve county and city boundaries as legislative district boundary lines and so far as is practicable to preserve current legislative district boundaries.
3. No legislative district may cross the Missouri River.
4. Senators elected in 1990 may finish their terms except that in those districts where over 20 percent of the qualified electors were not eligible to

vote in that district in 1990, senators must stand for reelection in 1992.

5. The plan or plans developed should contain options for the creation of House subdistricts in any Senate district that exceeds 3,000 square miles.

The Legislative Council contracted with Dr. Floyd Hickok, a geographer who performed consulting services in developing the 1981 redistricting plan, to provide computer-assisted services to the committee.

## BACKGROUND

### North Dakota Law

#### Constitutional Requirements

Section 1 of Article IV of the Constitution of North Dakota provides that the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members."

Section 2 of Article IV requires the Legislative Assembly "to fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." In addition, the districts ascertained after the 1990 federal census must continue until the adjournment of the first regular session after each federal decennial census, or until changed by law. The Legislative Assembly is also required to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates." One senator and at least two representatives must be apportioned to each senatorial district. However, two senatorial districts may be combined when a single senatorial district includes a federal facility or installation containing over two-thirds of the population of a single-member senatorial district and that elections may be at large or from subdistricts.

Section 3 of Article IV requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate, as nearly as practicable, are elected biennially.

#### Statutory Requirements

North Dakota Century Code Section 54-03-01.5 provides that a legislative apportionment plan based on any census taken after 1989 must provide that the Senate consist of 49 members and the House consist of 98 members. The plan also must ensure that population deviation from district to district be kept at a minimum. In addition, the total population variance of all districts, and subdistricts, if created, from the average district population may not exceed recognized constitutional limitations.

#### Federal Law

In 1962, the United States Supreme Court, in **Baker v. Carr**, 369 U.S. 186 (1962), determined that the courts would provide relief in state legislative redistricting cases where there are constitutional violations.

## Population Equality

In **Reynolds v. Sims**, 377 U.S. 533 (1964), the United States Supreme Court held that the equal protection clause of the 14th Amendment to the United States Constitution requires states to establish legislative districts substantially equal in population. The Court also ruled that both houses of a bicameral legislature must be apportioned on a population basis. Although the Court did not state what degree of population equality is required, it stated that "what is marginally permissible in one state may be unsatisfactory in another depending upon the particular circumstances of the case."

The measure of population equality most commonly used by the courts is overall range. The overall range of an apportionment plan is the sum of deviation from the ideal district population (the total state population divided by the number of districts) of the most and the least populous districts. In determining overall range, the plus and minus signs are disregarded and the number is expressed as an absolute percentage.

The United States Supreme Court has generally determined that a legislative redistricting plan with an overall range of 10 percent or less is safe from a constitutional challenge, absent a showing of discrimination in violation of the equal protection clause. If a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state must show that the plan is necessary to implement a rational state policy and that the plan does not dilute or eliminate the voting strength of a particular group of citizens. A plan with an overall range over 10 percent which is designed to guarantee representation to political subdivisions may be upheld if a large number of representatives are apportioned among a relatively small number of political subdivisions.

## Multimember Districts - Racial Discrimination

Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgement of a citizen's right to vote on account of race, color, or status as a member of a language minority group. A violation of that section may be proved by showing that as a result of the challenged practice or standard, the challengers of the plan do not have an equal opportunity to participate in the political process and to elect candidates of their choice.

Most of the decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial or language minorities. In **Reynolds**, the United States Supreme Court held that multimember districts are not unconstitutional per se. However, the Court has indicated that it prefers single-member districts, at least where the courts draw the districts in fashioning a remedy for an invalid plan. The Court has stated that a redistricting plan including multimember districts will constitute an invidious discrimination only if it can be shown that the plan, under the circumstances of a particular case, would operate to minimize or eliminate the voting strength of racial or political elements of the voting population.

In **Thornburg v. Gingles**, 478 U.S. 30 (1986), the United States Supreme Court stated that a minority group challenging a redistricting plan must prove at least three things: (1) the minority is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority is politically cohesive; and (3) in the absence of special circumstances, block voting by the white majority usually defeats the minority's candidate.

## Partisan Gerrymandering

In **Davis v. Bandemer**, 478 U.S. 109 (1986), the United States Supreme Court stated that political gerrymandering is justiciable. The Court pointed out "a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the equal protection clause." The Court concluded "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." Therefore, to support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

## History of Legislative Redistricting in North Dakota

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. During that period the Constitution of North Dakota provided that (1) the Legislative Assembly must apportion itself after each federal decennial census and (2) if the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment. Because the 1961 Legislative Assembly did not apportion itself following the 1960 census, the apportionment group (the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the majority and minority leaders of the House of Representatives) issued a plan that was challenged in court. In **State ex rel. Lien v. Sathre**, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined that the plan was unconstitutional and the 1931 apportionment plan continued to be law.

In 1963 the Legislative Assembly passed a redistricting plan that was challenged in federal district court and found unconstitutional as violative of the equal protection clause in **Paulson v. Meier**, 232 F. Supp. 183 (1964). The 1931 apportionment was also held invalid. Thus, there was no constitutionally valid legislative apportionment law. The court concluded that adequate time was not available within which to formulate a proper plan for the 1964 election and the court ordered the Legislative Assembly, operating under the 1963 plan, to devise promptly a constitutional plan.

In 1965 the Legislative Assembly adopted a redistricting plan that was challenged in federal court and found unconstitutional in **Paulson v. Meier**, 246 F.

Supp. 36 (1965). The federal court modified a plan that had been approved by the Legislative Research Committee's interim Constitutional Revision Committee and adopted that plan for the state.

After the Legislative Assembly failed to reapportion itself in 1971, an action was brought in federal district court which requested the court to order reapportionment and declare the 1965 plan invalid. The court entered an order to the effect that the existing apportionment was unconstitutional and that the court would issue a plan. The court appointed three special masters to formulate a plan and adopted a plan for the 1972 election only.

In 1973 the Legislative Assembly adopted a reapportionment plan that was vetoed by the Governor, but the Legislative Assembly overrode the veto. The plan was referred and was defeated at a special election on December 4, 1973.

In 1974 the federal district court in **Chapman v. Meier**, 372 F. Supp. 371 (1974), made the plan adopted by the federal court in 1971 permanent. However, on appeal, the United States Supreme Court ruled that plan unconstitutional in **Chapman v. Meier**, 420 U.S. 1 (1975).

In 1975 the Legislative Assembly adopted a modified version of the plan adopted by the federal district court in 1975. That plan was challenged in federal district court and found unconstitutional in **Chapman v. Meier**, 407 F. Supp. 649 (1975). The court held that the plan was violative of the equal protection clause because of the total population variance of 20 percent. The court appointed a special master to develop a plan and the court adopted that plan.

In a reconvened session in 1981, the Legislative Assembly adopted the current redistricting plan.

## TESTIMONY AND COMMITTEE CONSIDERATIONS

### Public Testimony

In addition to the four meetings held in Bismarck, the committee held meetings in Minot, New England, Edgeley, Lakota, Fargo, and Grand Forks to receive public testimony regarding redistricting proposals.

### Size of Legislative Assembly

Testimony indicated there is a great disparity in opinions regarding the appropriate size of the Legislative Assembly.

Proponents of reducing the size of the Legislative Assembly contend that a reduction in the number of legislators will result in cost savings to the state, will set an example for other state agencies and local governmental units to reduce the size of government, and will implement the will of the electorate, who expressed their intent for an overall reduction in the size of the government in North Dakota when tax increases were rejected at a special election in December 1989.

Those opposing a reduction in the size of the Legislative Assembly contend that cost savings resulting from reducing the number of legislators would be minimal, relative to the total cost of state government, and would not justify a reduction in representation for the people; that the negative impact on rural areas resulting from the loss of population and

the reduction in the number of legislators would be devastating; that other governmental agencies are not likely to reduce simply because the Legislative Assembly reduced its size; and that the voters in 1989 were more concerned with reducing the number of state employees than with reducing representation in the Legislative Assembly.

### Fort Berthold Reservation

American Indians from the Fort Berthold Reservation indicated their desire to have the entire Fort Berthold Reservation placed within one legislative district. Representatives of the Three Affiliated Tribes at Fort Berthold urged that a House subdistrict for the American Indians on the Fort Berthold Reservation should be established so that the American Indians would constitute a majority of the residents within that subdistrict. Their argument for such a subdistrict is that the federal Voting Rights Act of 1982 and the equal protection clause of the 14th Amendment to the United States Constitution require the Legislative Assembly to establish a minority district whenever possible. Thus, dividing the American Indian population on the Fort Berthold Reservation into more than one legislative district dilutes the American Indian vote. Also, by not creating a House subdistrict within the senatorial district that includes the Fort Berthold Reservation, it was contended that American Indian voters would be denied, through the use of at-large elections, an opportunity to elect a member of the House of Representatives.

### House Subdistricts

Testimony indicated that the establishment of House subdistricts within senatorial districts may be desirable, particularly with respect to geographically large senatorial districts and senatorial districts containing Indian reservations. The arguments in favor of House subdistricts are that subdistricts would reduce the distance between House members and their constituents in geographically large districts and that the federal courts generally do not look favorably upon the establishment of multimember districts with at-large elections.

Arguments against House subdistricts are that the creation of subdistricts along with the changes necessitated by the reduction in population and the reduction in the size of the Legislative Assembly would further complicate the redistricting process, that the best candidates for the Legislative Assembly may often reside in an area that could be within one subdistrict, that the voters often vote in a manner that guarantees a geographic distribution of legislators within a district, and that subdistricts may be established in the future after the effects of the redistricting process are assessed.

### Missouri River

Although the redistricting guidelines contained in House Concurrent Resolution No. 3026 provided that no district may cross the Missouri River, testimony indicated that the Missouri River is not a statistical obstacle that prevents a district from including area

on both sides of the river. By crossing the Missouri River to place the Fort Berthold Reservation within one district, a 49-district or a 50-district plan could be established which would provide for almost perfect population equality. In order for a 53-district plan to satisfy population equality requirements, more than one district would likely have to cross the Missouri River.

### **Air Force Bases**

Testimony indicated that because voter turnout and political participation has historically been very low on the two Air Force bases in the state, the impact of the base populations should be minimized in some way. Federal courts have determined that military personnel cannot be excluded per se for redistricting purposes, unless there is some available method of determining the residency status of the military personnel on the Air Force bases.

Three options are available to address the population of the Air Force bases:

1. Place the Air Force bases in an urban district;
2. Place the Air Force bases in a rural district; or
3. Split the Air Force bases between urban and rural districts.

Section 2 of Article IV of the Constitution of North Dakota allows the Legislative Assembly to combine two senatorial districts only when a single-member senatorial district includes a federal facility or federal installation containing over two-thirds of the population of a single-member senatorial district. The populations of the Grand Forks Air Force Base and the Minot Air Force Base are over two-thirds the size of a single-member senatorial district. If the bases are not divided into more than one district, the base districts may be combined with a contiguous district.

Proponents of combining the Air Force bases with urban districts contend that the residents of the Air Force bases have significantly more common ties with the residents of Grand Forks and Minot than with rural residents.

Others contend that if the bases are not divided, the Air Force base districts should be combined with rural districts because the residents of the bases have as much in common with rural residents around the bases as with residents of Grand Forks and Minot. Also, it would be fairer to provide the rural districts with the benefit of the Air Force base populations.

Opponents of combining the Air Force base districts with other senatorial districts contend that the fairest solution would be to divide the bases between two contiguous districts. They contend that dividing the bases would not present any additional problems; would not further reduce political participation on the bases; and, if the Air Force base populations are split between an urban district and a rural district, the result would be a fair method of reducing the impact of the bases while not disenfranchising residents of the Air Force bases.

### **Referral of Redistricting Plan**

Section 1 of Article III of the Constitution of North Dakota provides that the people reserve the power to approve or reject legislative acts, or parts thereof, by the referendum. Although Section 2 of Article IV of the constitution states that the Legislative Assembly

is responsible for establishing the legislative districts, and that the districts determined by the Legislative Assembly shall continue until the adjournment of the first regular session after each federal decennial census or until changed by law, it appears that the constitution does allow the electors of the state to refer a legislative redistricting plan.

The submission of a referendum petition suspends the operation of the measure enacted by the Legislative Assembly, except for emergency measures and appropriation measures for the support and maintenance of state departments and institutions. If the Legislative Assembly enacts a measure providing for a redistricting plan in November 1991, and if the entire measure is referred, the current redistricting plan would remain in effect unless the referred measure were approved at a special election before the June 1992 primary election.

If a redistricting plan adopted by the Legislative Assembly is referred, there may not be sufficient time to conduct a special election prior to the time deadlines for candidates to file for the primary election. The committee determined that legislation may be necessary to expedite special election procedures and allow for the reduction in time deadlines for filing, appointments, and election material preparation before the primary election.

### **Staggering of Senate Terms**

The 1981 redistricting legislation contained a procedure for the staggering of the terms of senators. A senator elected in 1980 whose new district contained new geographic area was required to run for election in 1982 for a two-year term if (1) that area was not in that senator's district for the 1980 election and (2) that area had a 1980 population of more than 2,000.

The committee reviewed information and discussed methods for determining whether a senator elected in 1990 would be required to run for election in 1994. At its first meeting, the committee approved a motion stating that a senator elected in 1990 would be required to run for election to a two-year term in 1992 if the senator's district contains new geographic area in which over 20 percent of the district's population resides or if the district lost geographic area in which over 20 percent of the 1990 population of the district that elected that senator resided.

### **Committee Guidelines**

The committee requested the preparation of plans for 49, 50, and 53 districts based upon these guidelines:

1. The plans may not provide for a population variance of over 10 percent.
2. The plans may include districts that cross the Missouri River so that the Fort Berthold Reservation is included within one district.
3. The plans must provide alternatives for splitting the Grand Forks Air Force Base and the Minot Air Force Base into more than one district and alternatives that would allow the bases to be combined with other contiguous districts.

### **RECOMMENDATIONS**

The committee recommends two alternate bills—Senate Bill Nos. 2597 and 2598—both of which would

establish 49 legislative districts. Senate Bill No. 2597 splits both the Grand Forks Air Force Base and the Minot Air Force Base so that neither base may be combined with another district to form a multisenate district. Senate Bill No. 2598 places the Minot Air Force Base entirely within one district so that the Minot Air Force Base district may be combined with another district. Each bill repeals the current legislative redistricting plan. Each bill would be effective on the date of its filing with the Secretary of State. Neither bill contains a provision providing for the staggering of Senate terms or the treatment of hold-over senators.

Under a 49-district plan, the ideal district size would be 13,037. Under the plans recommended by the committee, the smallest district would have a population of 12,402 and the largest district would have a population of 13,608. Thus, the smallest district would be 4.87 percent below the ideal district size and the largest district would be 4.38 percent above the ideal district size, providing for an overall range of 9.25 percent. Maps of the proposed districts and the district population figures are included with this report.

The committee recommends Senate Bill No. 2599 to allow the Governor to call a special election to be held in 30 to 50 days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan.

## **LEGISLATIVE SUBDISTRICT STUDY**

### **Background**

The Legislative Assembly in a special session held November 4-8, 1991, adopted Senate Bill No. 2597 with some amendments with respect to district boundaries. The bill was also amended to provide that any senator from a district in which there was another incumbent senator as a result of legislative redistricting (Districts 6, 10, 14, 28, and 36) must be elected in 1992 for a term of four years; to provide that the senator from District 41, the new district in Fargo, be elected in 1992 for a term of two years; and to include an effective date of December 1, 1991. In addition, the bill was amended to include a directive to the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

As directed by Senate Bill No. 2597, the Legislative Council assigned to the committee the responsibility to develop a plan for subdistricts for the House of Representatives. In addition, the committee continued to study other aspects of the redistricting process.

### **Testimony and Committee Considerations Air Force Base Subdistricts**

Committee members generally agreed that dividing the senatorial districts that include the Air Force bases into House subdistricts would be very difficult, particularly with respect to the two districts where portions of the Air Force bases are connected to portions of the cities of Grand Forks and Minot. In addition, there was concern that further division of the Air Force base districts would create confusion regarding district boundaries and reduce voter turnout on the Air Force bases.

### **Indian Reservation Subdistricts**

American Indians from the Fort Berthold Reservation requested the committee to establish a House subdistrict containing only the Fort Berthold Reservation. They contended that the American Indian voting rights had been diluted and American Indians had been disenfranchised under prior redistricting plans. In addition, it was argued that the refusal to establish a House subdistrict containing only the Fort Berthold Reservation would be a violation of the federal Voting Rights Act.

American Indians from the Fort Berthold Reservation instituted a civil action in federal district court requesting the court to declare the redistricting plan adopted by the Legislative Assembly at the November 1991 special session unconstitutional and establish a House subdistrict consisting of a majority of American Indians. The action was dismissed based upon the inability to create a subdistrict having a majority American Indian population in District 4 based upon the 1990 census.

### **Four-Year House Terms**

Section 4 of Article IV of the Constitution of North Dakota provides that senators must be elected for terms of four years and representatives for terms of two years. The committee considered a resolution draft to amend the constitution to increase the term of office for members of the House of Representatives from two years to four years. In addition, the resolution draft directs the Legislative Assembly to establish a procedure whereby one-half of the members of the Legislative Assembly are elected biennially and allows two-year terms to implement that procedure. The resolution draft also provided that members of the Legislative Assembly elected from a senatorial district must be elected in the same year.

Proponents of the resolution draft contended that requiring members of the House of Representatives to run for office every two years is an unnecessary expense. In addition, they argued that no other officeholders in the state are required to run for election every two years. With respect to the requirement that members of the Legislative Assembly elected from a senatorial district be elected in the same year, committee members generally agreed that the Legislative Assembly could address that issue when establishing the procedure for staggering of terms.

### **Reduction of Senate Terms After Redistricting**

Section 3 of Article IV of the Constitution of North Dakota provides that the Legislative Assembly shall establish by law a procedure whereby one-half of the members of the Senate, as nearly as practicable, are elected biennially.

In March 1992 the Attorney General opined that the provision in Senate Bill No. 2597 (1991), which reduced the term of office of three senators who were placed in districts with other incumbent senators as a result of redistricting, was unconstitutional because the Constitution of North Dakota provides for four-year Senate terms. Although the committee's research did not support a finding of unconstitutionality, committee members expressed concern with respect to the future effect and uncertainty caused by



the opinion.

The committee considered a resolution draft that specifically allowed the Legislative Assembly to shorten the term of a senator or provide for a two-year Senate term when necessary to maintain staggered terms after redistricting. Proponents of the resolution stated that even though the constitution implicitly allows the Legislative Assembly to provide for shortened terms or to shorten a term to maintain the required staggering of terms, a specific authorization would remove any doubt with respect to the authority of the Legislative Assembly.

### **Nomination Petition Signature Requirements**

North Dakota Century Code (NDCC) Section 16.1-11-11 provides that a candidate for legislative office may have that person's name placed on the primary election ballot by filing a petition containing the signatures of qualified electors equal in number to not less than two percent and not more than five percent of the total vote cast for the candidate of the party represented for the same office at the most recent general election at which the office was voted upon. If there were more than one candidate, the number of signatures necessary is not less than two percent and not more than five percent of the total number of votes for all party candidates divided by the number of party candidates. If no candidate was elected or no votes were cast for an office at any general election, the number of signatures required is not less than two percent and not more than five percent of the total average vote cast for the offices of sheriff and county auditor at the most recent general election at which those officers were elected in the petitioner's county or district. The average must be determined by dividing by two the total vote cast for those offices. However, in no case may more than 300 signatures be required.

Section 16.1-12-02.1 provides that a person may submit a petition for independent nomination to have that person's name placed on the general election ballot as a legislative candidate. The number of signatures required for a nomination petition for a legislative candidate is equal to 10 percent of the number of votes cast in the district for Governor at the last preceding general election. However, in no case may more than 300 signatures be required.

The committee received information indicating that signature requirements for petitions for candidates for legislative office may be unclear in circumstances after legislative district boundary lines have been changed. In addition, the number of signatures required varies from district to district and within districts depending upon the party of the candidate. Because each legislative district contains approximately the same number of residents, committee members generally agreed that a flat percentage of the number of residents of the district would be a fair and more uniform method through which the number of signatures required is determined. The committee determined that the 300 signature maximum requirements and the higher signature requirement for independent nominations for the general election should be retained.

The committee considered a bill draft that pro-

vided that the number of signatures necessary for a candidate for legislative office to place that candidate's name on the primary election ballot is equal to at least one percent of the total resident population of the legislative district as determined by the most recent federal decennial census and the number of signatures required for a candidate to place that candidate's name on the general election ballot as an independent candidate is equal to at least two percent of the resident population of the district as determined by the most recent federal decennial census.

### **Recommendations**

The committee recommends House Bill No. 1050 to establish House subdistricts within each Senate district, except in Districts 18, 19, 38, and 40, which are the districts that include portions of the Air Force bases. The bill also provides that a representative elected from a subdistrict must be, on the day of election, a qualified elector in the subdistrict from which the representative was chosen. The bill contains an effective date of January 1, 1996.

The committee recommends House Concurrent Resolution No. 3002 to amend the Constitution of North Dakota to increase the term of office for members of the House of Representatives from two years to four years.

The committee recommends Senate Concurrent Resolution No. 4007 to provide that when necessary to maintain staggered terms after redistricting, the Legislative Assembly may shorten the term of a senator or provide for a two-year Senate term.

The committee recommends House Bill No. 1051 to provide that the number of signatures necessary for a candidate for legislative office to place that candidate's name on the primary election ballot is equal to at least one percent of the total resident population of the legislative district as determined by the most recent federal decennial census and the number of signatures required for a candidate to place that candidate's name on the general election ballot as an independent candidate is equal to at least two percent of the resident population of the district as determined by the most recent federal decennial census.

## **ELECTION LAWS STUDY**

### **Background**

During the 1989-90 interim, the Legislative Council's interim Elections Committee was directed to consider all aspects of the election process with emphasis on new voting concepts that would make the process more timely and cost effective. The committee focused its study on the feasibility of conducting mail ballot elections and conducted a mail ballot election experiment during the 1990 primary election. During the later part of the interim, the committee received testimony from the Secretary of State regarding what the Secretary of State viewed as conflicting provisions and inconsistencies in North Dakota election laws.

Senate Concurrent Resolution No. 4001 was recommended by the interim committee and introduced by the Legislative Council. In testimony before the Senate and House standing Committees on Judiciary, the Secretary of State indicated that a comprehensive review of the election code, including

provisions relating to the financing of election campaigns and the reporting of election campaign contributions and expenditures, is necessary.

### **North Dakota Election Laws**

North Dakota's election laws are contained in NDCC Title 16.1, which consists of 17 chapters, including one chapter that is reserved for elector registration.

Chapter 16.1-01 sets forth general provisions relating to elections. Chapter 16.1-02 is reserved for elector registration. Chapter 16.1-03 contains requirements and procedures for party committee organization. Chapter 16.1-04 addresses precincts and voting places. Chapter 16.1-05 sets forth the requirements and duties of election officers. Chapter 16.1-06 contains provisions relating to ballots, voting machines, and electronic voting systems. Chapter 16.1-07 contains provisions relating to absent voters' ballots and absentee voting. Chapter 16.1-08 relates to campaign contributions. Chapter 16.1-08.1 requires candidates to file campaign contribution statements. Chapter 16.1-09 requires candidates to file statements of interest. Chapter 16.1-10 contains provisions relating to corrupt practices. Chapter 16.1-11 contains the requirements and procedures for nominations for office at primary elections. Chapter 16.1-12 contains the requirements and procedures for filing certificates of nomination and filling vacancies. Chapter 16.1-13 contains provisions relating to general elections. Chapter 16.1-14 relates to presidential electors. Chapter 16.1-15 contains provisions relating to canvassing boards and the canvass of votes. Chapter 16.1-16 contains provisions relating to contests of elections.

### **Campaign Contributions**

North Dakota Century Code Chapter 16.1-08 addresses campaign contributions. A candidate is defined as "a person whose name is presented for nomination to public office at any primary election or convention, whether the person is actually nominated or not; a person whose name is printed as a candidate on an official ballot used at any election; or a person who seeks election through write-in votes." A contribution is defined as "a gift of money or property, subscription, loan, advance, or deposit of money, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election of any person to office." Contribution also means "a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes, and includes funds received by a political committee which are transferred to that committee from another political committee or other source." An expenditure is defined as "a purchase, payment, distribution, loan, advance, deposit, or gift of money or property, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election of any person to office." In addition, an expenditure also means "a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by

a political committee to another political committee." A political purpose is defined as "any activity undertaken in support of or in opposition to the election or nomination of a candidate whether the activity is undertaken by a candidate, a political committee, a political party, or any person."

Corporations, cooperative corporations, or associations are prohibited from making direct contributions:

1. To aid any political party, political committee, or organization.
2. To aid any corporation or association organized or maintained for political purposes.
3. To aid any candidate for political office or for nomination to political office.
4. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
5. For the influencing of any measure before the Legislative Assembly.

A corporation, cooperative corporation, or association may establish, administer, and solicit contributions to a separate and segregated fund to be utilized for political purposes. A political committee formed to aid or oppose a political party, committee, organization, association, a candidate for political office or nomination to political office, or a measure to be voted upon by the voters of the state must register its name, address, and agent's name and address with the Secretary of State. A political committee formed for the purpose of administering segregated funds is required to file a statement listing all contributions received in excess of \$200 in the aggregate from each contributor for the 12-month period beginning with the first day of October and ending with the 30th day of September of the following year. In addition, the statement must list all disbursements of an amount in excess of \$100 in the aggregate made for political purposes following each 12-month period.

No person may make a payment of money to any other person for a political purpose in any name other than that of the person who supplies the money.

Chapter 16.1-08 does not prohibit the exercise by corporations, cooperative corporations, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, or association other than a "political purpose."

### **Campaign Contribution Statements**

Chapter 16.1-08.1 addresses campaign contribution statements. Any candidate for a public office at any general, primary, or special election, or any candidate who sought a public office or is seeking a public office and who is soliciting or accepting contributions for any political purpose, must file a detailed statement of all contributions received from each individual or political committee that exceed \$100 in the aggregate for the calendar year. The statement must be filed with the Secretary of State no later than 4:00 p.m. on the 10th day before the date of the general, primary, or special election in which the candidate's name appears on the ballot or in which

the candidate seeks election through write-in votes complete from the beginning of that calendar year through the 15th day before the date of the election. In addition, a complete statement for the entire calendar year must be filed no later than 4:00 p.m. on the 30th day of January of the following calendar year, regardless of whether the candidate's name appeared on the ballot for any office during that calendar year or whether the candidate did not seek election at any election through write-in votes. If a candidate has not received any contribution in excess of \$100 during the calendar year, the candidate is not required to file a statement.

Political parties that receive contributions in excess of \$100 and which contribute money to a candidate in excess of \$100 must file a statement listing the total amount contributed to or expended on behalf of a candidate or candidates or file a statement containing a detailed list of all contributions received from an individual or political committee which exceed \$100 in amount.

Any person who is soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of any statewide initiated or referred measure is required to file a statement if any contributions from a person in excess of \$100 in the aggregate during the calendar year have been received.

If any candidate or person soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of a statewide initiated or referred measure receives any contribution of \$500 or more in the 15-day period before any primary, general, or special election from any individual contributor, the candidate or person must file a supplemental statement reporting the name and address of the contributor and the amount of the contribution within 48 hours of receipt of the contribution.

### **Testimony and Committee Considerations**

The Secretary of State testified that all aspects of the election code are in need of revision. The Secretary of State expressed a particular concern with respect to the laws relating to campaign contributions and campaign contribution statements. The Secretary of State informed the committee that he had established several committees to study various election law issues, including a committee on campaign disclosure laws. Areas to be addressed by that committee included the disclosure of campaign contributions and expenditures, expenditure limitation, campaign finance, and public information with respect to campaign contributions.

Although the Secretary of State's committee on campaign disclosure did not complete its study and make a report to the committee, the Secretary of State requested the committee to revise the campaign contribution report filing deadlines to conform to deadlines established under federal law for federal candidates and political committees. The committee considered a bill draft that changed the campaign contribution report filing deadlines for political committees to reflect the reporting dates under federal law. The bill draft required a political committee to

file an annual campaign contribution report with the Secretary of State by 5:00 p.m. on the 31st day of January of each year. The statement must list all contributions received in excess of \$200 in the aggregate from each contributor for the previous calendar year. The bill draft also required a political committee to file a preelection report by 5:00 p.m. on the 12th day before any statewide election. That report must be complete for the calendar year through the 20th day before the election. If a political committee received any contribution or made any disbursement in the amount of \$500 or more in the aggregate within 20 days before any statewide election, the political committee would be required to file a supplemental statement with the Secretary of State within 48 hours after receiving the contribution or making the disbursement.

The committee received information regarding campaign financing and expenditure disclosure laws in adjacent states. In addition, the committee reviewed a summary of public financing of campaigns in Minnesota and Montana.

Committee members generally agreed that North Dakota campaign contribution reporting requirements need refinement. The concerns were the extent and type of changes needed. The committee determined that changing the filing deadlines to conform to federal deadlines and requiring a preelection report and supplemental reports would be a good first step in addressing concerns with respect to campaign contribution reporting.

The committee considered a bill draft that revised requirements with respect to campaign contribution statements. The bill draft required each candidate to report all contributions from political committees, loans made to the candidate, all contributions exceeding \$100 in the aggregate for the calendar year, and the total value of all contributions received. The bill draft required district committees of political parties to file campaign contribution statements and state political party committees to file contribution and expenditure statements. In addition, the bill draft required political committees to file contribution statements listing all contributions received in excess of \$100. Any person willfully violating the campaign contribution reporting requirements would be subject to a penalty of an amount equal to the amount of any contribution that is a subject of the violation. However, before a person could be charged with a violation, the county auditor or the Secretary of State would be required to notify the person of the violation and allow the person five days to remedy the violation. If the person remedied the violation, no further action could be taken with respect to that violation.

Proponents of the bill draft argued that the additional requirements would not be burdensome and that the public has a right to know who is funding campaigns. Opponents of the bill draft contended the additional requirements are not likely to address the real problem with the campaign contribution laws—the broad and unclear definition of a contribution. In addition, they argued that the bill draft would have a detrimental effect on the volunteer nature of political parties and would be unnecessarily burdensome.

The committee considered a bill draft that would have established various limits on contributions that

candidates could accept from individuals and political committees. In addition, the bill draft would have limited the amount of money a candidate could receive through loans and through funds contributed by the candidate. The bill draft also would have established limits on when a candidate could solicit and accept contributions and would have extended the campaign contribution laws to candidates for political subdivision offices.

Committee members expressed concern with respect to the constitutionality and desirability of limiting the receipt by candidates of campaign contributions. In addition, there were concerns with respect to the inclusion of political subdivision candidates in the bill draft and the restrictions on when a candidate could receive contributions.

The committee discussed the use of leftover campaign contributions after a person ceases to be a candidate. Some committee members expressed concern because the campaign contribution law does not specifically authorize persons to return campaign contributions to the contributors or to donate contributions after the person ceases to be a candidate.

The committee considered a bill draft that allowed a person who ceases to be a candidate to return a contribution to the contributor or use unexpended contributions as a contribution to any candidate or as a donation to any charitable or educational organization.

### **Recommendations**

The committee recommends Senate Bill No. 2046 to change the filing deadlines for campaign contribution reports by political committees to conform to deadlines established under federal law for federal candidates and political committees. The bill requires a political committee to file by 5:00 p.m. on the 31st day of January of each year a campaign contribution statement listing all contributions received in excess of \$200 in the aggregate from each contributor for the previous calendar year. The bill also requires political committees to file a preelection statement listing all contributions received in excess of \$200 in

the aggregate from each contributor from the beginning of the calendar year and all disbursements of an amount of \$100 in the aggregate made for political purposes during the year. The preelection statement must be filed by 5:00 p.m. on the 12th day before any statewide election and must be complete through the 20th day before the election. In addition, the bill provides that if a political committee receives any contribution or makes any disbursement in the amount of \$500 or more in the aggregate within 20 days before any statewide election, the political committee must file a supplemental statement with the Secretary of State within 48 hours after receiving the contribution or making the disbursement.

The committee recommends Senate Bill No. 2047 to revise campaign contribution statement requirements. The bill requires a candidate to report all contributions from political committees, loans made to the candidate, all contributions exceeding \$100 in the aggregate for the calendar year, and the total value of all contributions received. The bill requires district committees of political parties to file campaign contribution statements and state political party committees to file contribution and expenditure statements. In addition, the bill requires political committees to file contribution statements listing all contributions received in excess of \$100. Any person willfully violating the campaign contribution reporting requirements would be subject to a penalty of an amount equal to the amount of any contribution that is a subject of the violation. However, before a person could be charged with a violation, the county auditor or the Secretary of State would be required to notify the person of the violation and allow the person five days to remedy the violation. If the person remedies the violation, no further action could be taken with respect to that violation.

The committee recommends House Bill No. 1052 to allow a person who ceases to be a candidate to return a contribution to the contributor or use unexpended contributions as a contribution to any candidate or as a donation to any charitable or educational organization.

**REDISTRICTING COMMITTEE PLAN**  
**Adopted October 1, 1991**

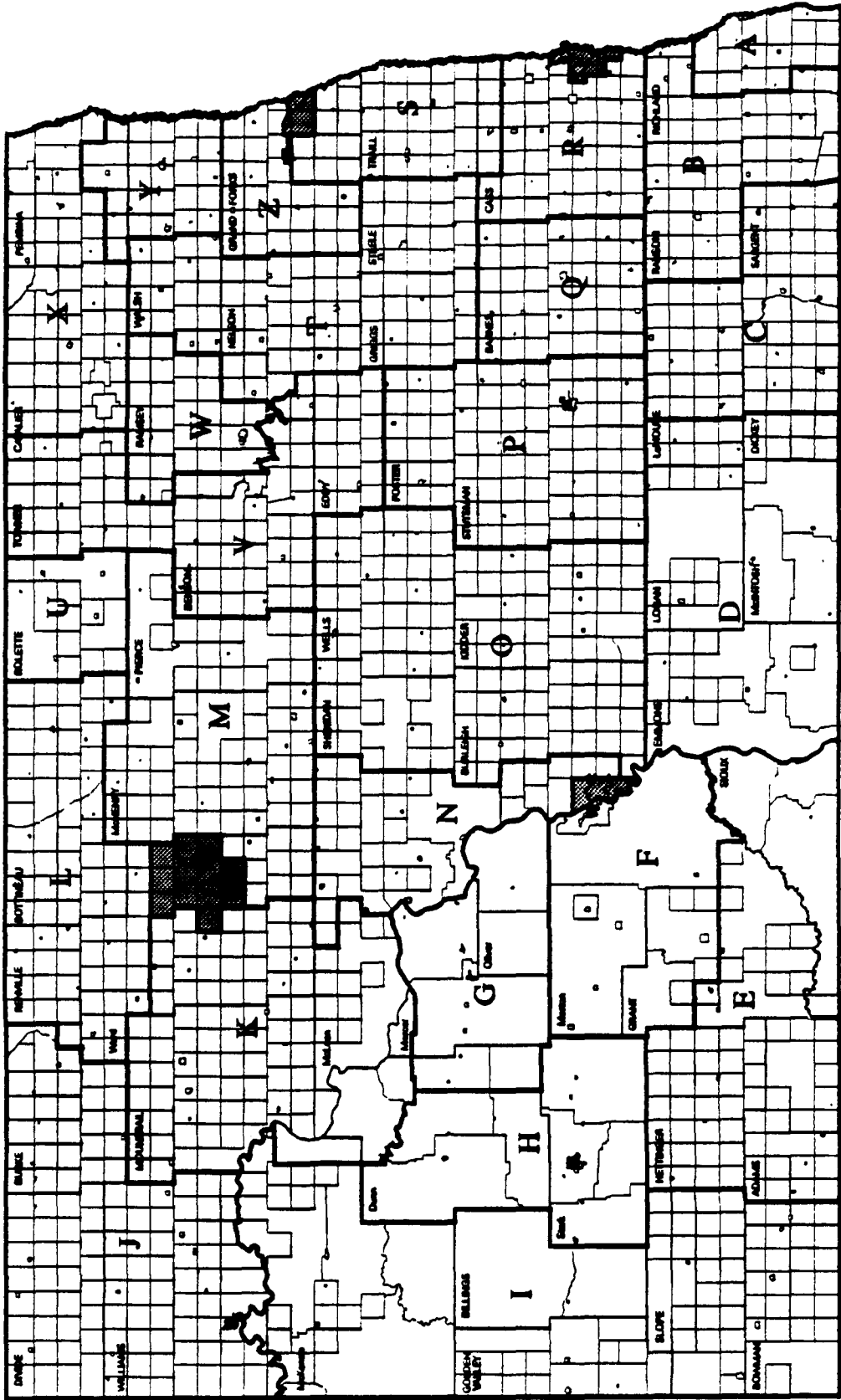
| Dist-<br>rict    | Population |           | American Indian |           | Area     | Deviation |
|------------------|------------|-----------|-----------------|-----------|----------|-----------|
|                  | Total      | 18 & over | Total           | 18 & over |          |           |
| A                | 12,694     | 9,171     | 396             | 136       | 647.36   | -2.63     |
| B                | 12,955     | 9,590     | 36              | 23        | 1,957.21 | -0.63     |
| C                | 12,994     | 9,548     | 27              | 19        | 2,308.66 | -0.33     |
| D                | 13,163     | 10,011    | 20              | 11        | 4,202.91 | 0.97      |
| E                | 12,679     | 8,739     | 2,865           | 1,479     | 4,233.61 | -2.75     |
| F                | 12,548     | 8,614     | 139             | 57        | 2,612.31 | -3.75     |
| G                | 13,060     | 8,845     | 243             | 133       | 2,069.97 | 0.18      |
| H                | 13,097     | 8,914     | 101             | 55        | 2,640.00 | 0.46      |
| I                | 13,226     | 9,214     | 119             | 63        | 7,239.07 | 1.45      |
| J                | 13,582     | 9,781     | 510             | 273       | 4,559.18 | 4.18      |
| K                | 12,659     | 8,680     | 3,047           | 1,713     | 4,179.16 | -2.90     |
| L                | 13,020     | 9,627     | 84              | 62        | 2,875.94 | -0.13     |
| M                | 12,983     | 9,517     | 50              | 33        | 3,353.57 | -0.41     |
| N                | 13,608     | 9,386     | 146             | 96        | 1,855.46 | 4.38      |
| O                | 13,506     | 10,071    | 21              | 12        | 4,972.49 | 3.60      |
| P                | 13,377     | 9,867     | 93              | 65        | 2,934.84 | 2.61      |
| Q                | 12,545     | 9,453     | 57              | 39        | 1,520.60 | -3.77     |
| R                | 12,727     | 8,854     | 34              | 26        | 1,503.01 | -2.38     |
| S                | 13,106     | 9,514     | 60              | 40        | 1,416.31 | 0.53      |
| T                | 13,353     | 10,007    | 31              | 16        | 3,287.47 | 2.42      |
| U                | 12,772     | 7,895     | 8,497           | 4,756     | 942.20   | -2.03     |
| V                | 12,746     | 8,709     | 2,860           | 1,442     | 3,267.09 | -2.23     |
| W                | 13,432     | 9,951     | 615             | 338       | 1,092.47 | 3.03      |
| X                | 12,628     | 9,151     | 158             | 111       | 2,158.89 | -3.14     |
| Y                | 13,573     | 9,797     | 108             | 64        | 1,011.10 | 4.11      |
| Z                | 13,275     | 8,961     | 83              | 54        | 974.01   | 1.83      |
| <b>Bismarck</b>  |            |           |                 |           |          |           |
| A                | 13,347     | 9,667     | 174             | 99        | 24.84    | 2.38      |
| B                | 13,228     | 9,807     | 182             | 87        | 16.29    | 1.47      |
| C                | 13,435     | 9,420     | 542             | 272       | 3.72     | 3.05      |
| D                | 13,426     | 10,018    | 657             | 399       | 43.56    | 2.98      |
| <b>Dickinson</b> |            |           |                 |           |          |           |
|                  | 12,459     | 9,024     | 85              | 46        | 8.84     | -4.43     |
| <b>Fargo</b>     |            |           |                 |           |          |           |
| A                | 12,554     | 10,073    | 100             | 64        | 16.49    | -3.70     |
| B                | 12,583     | 9,670     | 108             | 62        | 2.45     | -3.48     |
| C                | 13,421     | 11,029    | 282             | 153       | 7.56     | 2.95      |
| D                | 12,897     | 9,557     | 154             | 89        | 2.71     | -1.07     |
| E                | 12,657     | 9,408     | 110             | 69        | 29.46    | -2.91     |
| F                | 12,534     | 9,382     | 54              | 42        | 17.14    | -3.86     |

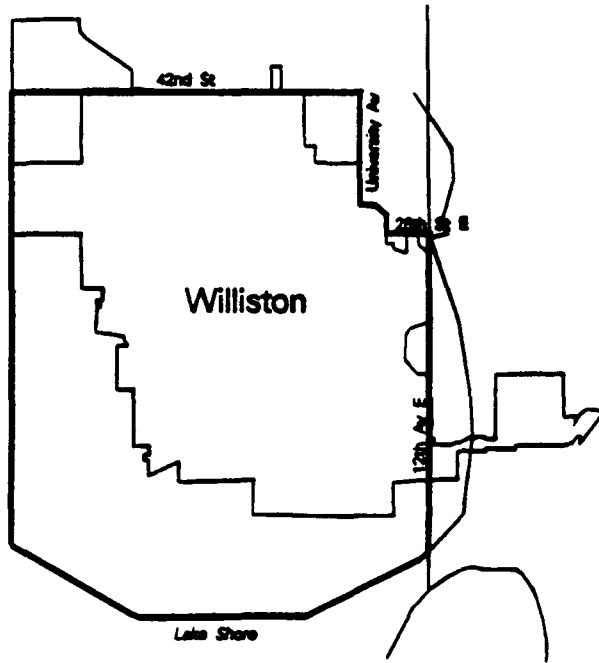
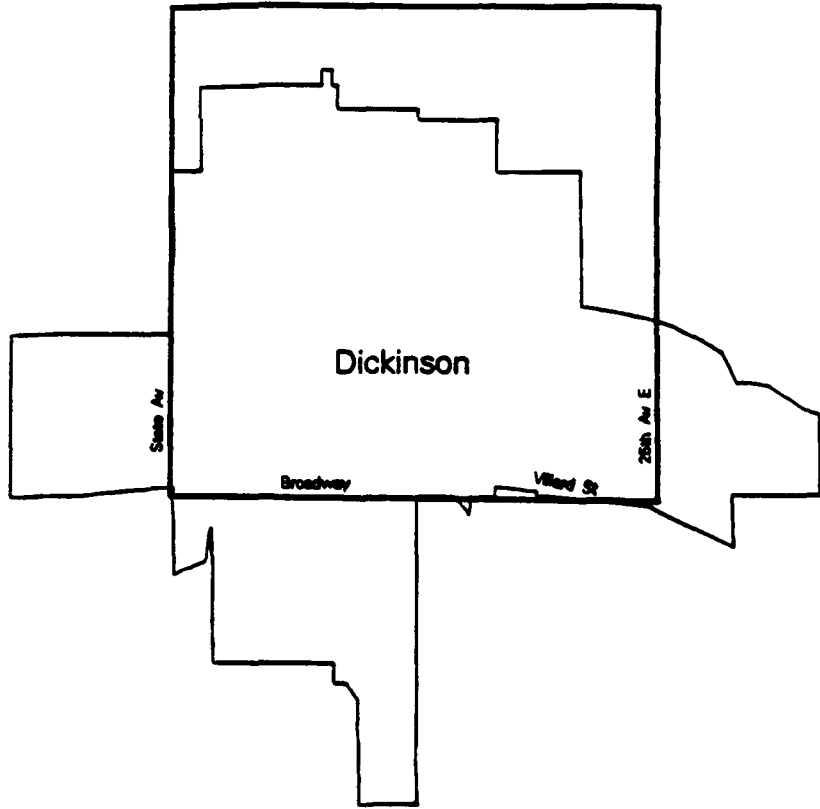
|                    |        |        |     |     |        |       |
|--------------------|--------|--------|-----|-----|--------|-------|
| <b>Grand Forks</b> |        |        |     |     |        |       |
| A                  | 13,526 | 10,018 | 363 | 219 | 24.27  | 3.75  |
| B                  | 13,444 | 10,855 | 449 | 258 | 2.60   | 3.12  |
| C                  | 13,525 | 10,296 | 195 | 115 | 12.11  | 3.74  |
| D                  | 13,535 | 9,892  | 138 | 93  | 46.09  | 3.82  |
| <b>Jamestown</b>   |        |        |     |     |        |       |
|                    | 12,847 | 9,478  | 70  | 52  | 8.09   | -1.46 |
| <b>Mandan</b>      |        |        |     |     |        |       |
|                    | 12,402 | 8,825  | 301 | 162 | 5.01   | -4.87 |
| <b>Minot</b>       |        |        |     |     |        |       |
| A1                 | 12,689 | 8,928  | 121 | 72  | 149.30 | -2.67 |
| A2                 | 12,546 | 8,244  | 127 | 74  | 201.09 | -3.77 |
| B1                 | 12,646 | 8,657  | 285 | 140 | 58.26  | -3.00 |
| B2                 | 12,789 | 9,348  | 279 | 138 | 6.55   | -1.90 |
| C                  | 13,188 | 10,150 | 171 | 111 | 8.04   | 1.16  |
| D                  | 13,176 | 9,413  | 354 | 203 | 220.51 | 1.07  |
| <b>West Fargo</b>  |        |        |     |     |        |       |
|                    | 12,525 | 8,489  | 102 | 63  | 18.12  | -3.93 |
| <b>Williston</b>   |        |        |     |     |        |       |
|                    | 13,448 | 9,489  | 520 | 302 | 13.12  | 3.15  |

Under this plan the smallest district would have a population of 12,402 and the largest would be 13,608 with a total deviation of 9.25 percent. The mean absolute deviation would be 2.55 percent. There would be nine districts with more than 3,000 square miles.

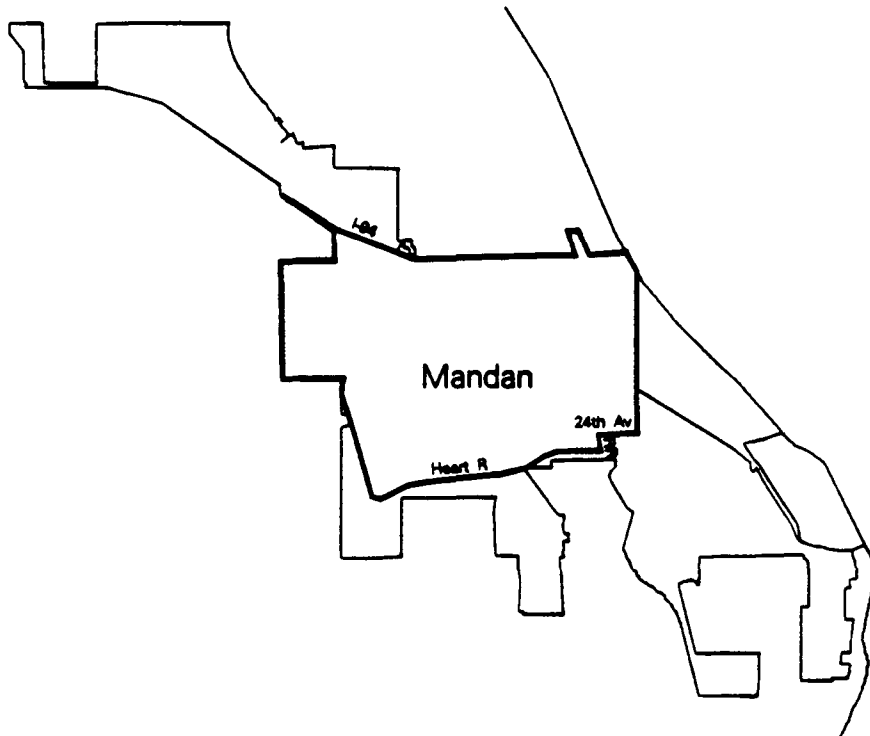
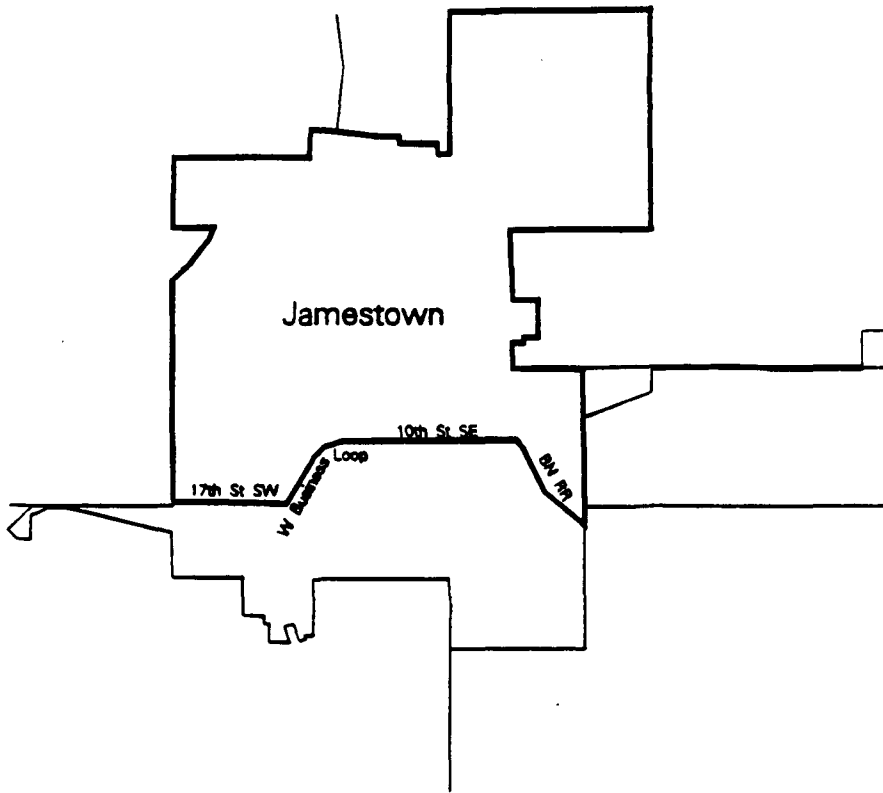
# REDISTRICTING COMMITTEE PLAN

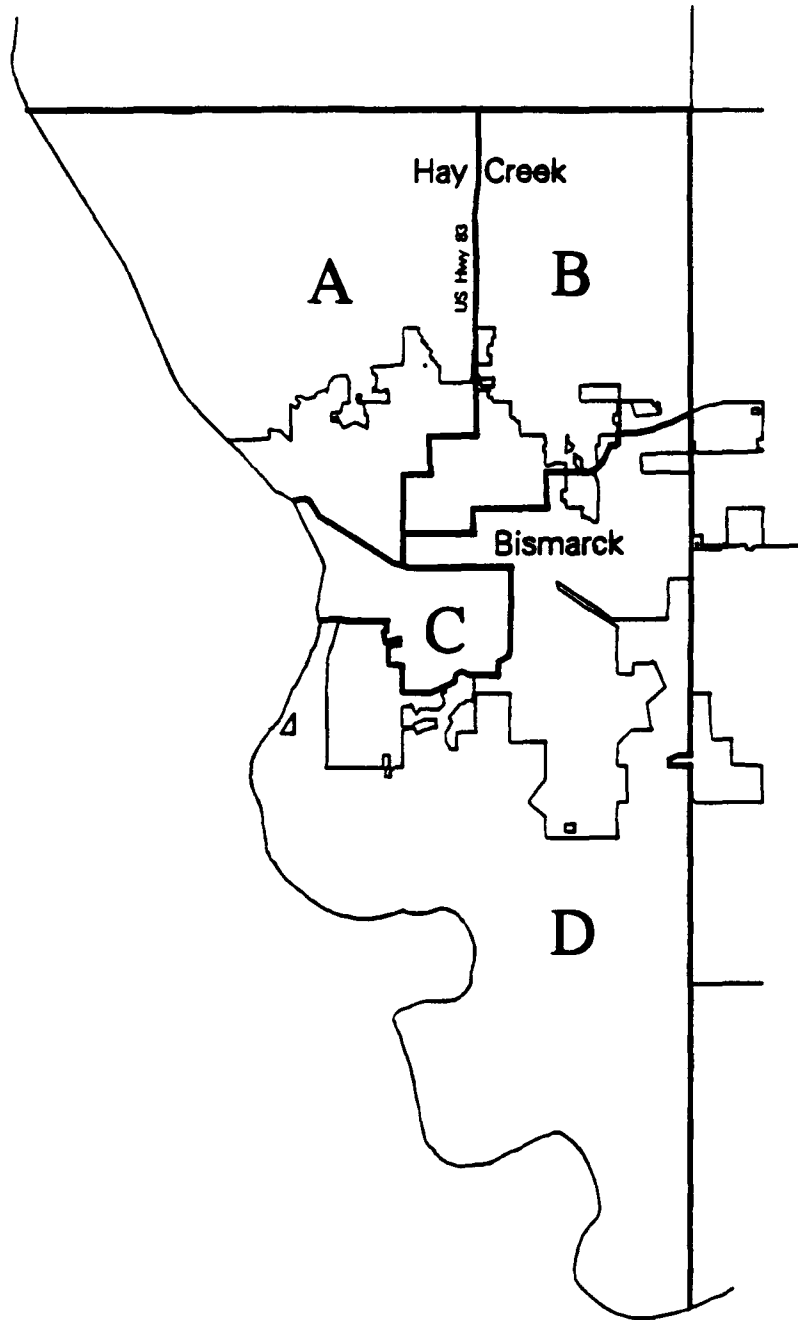
Adopted October 1, 1991

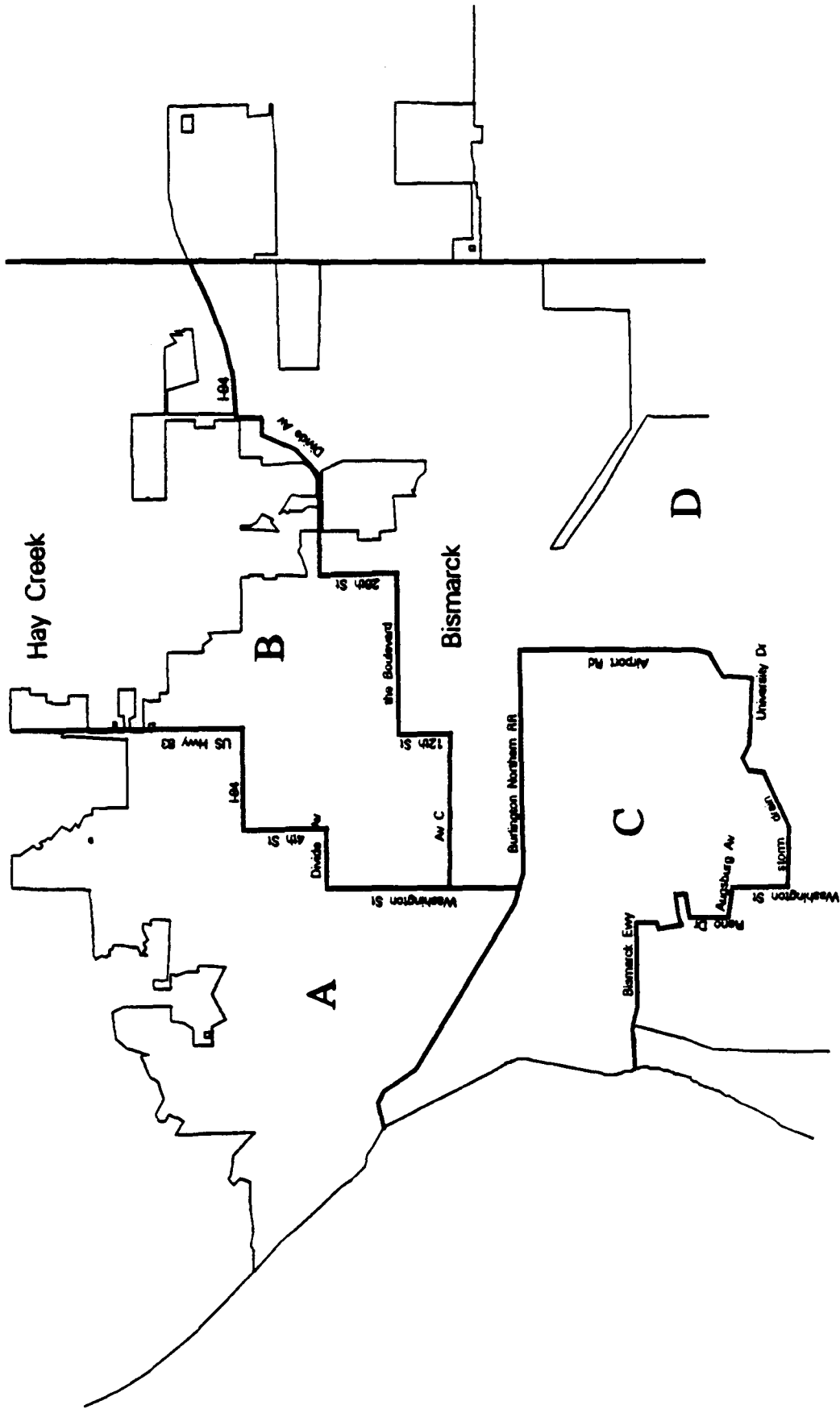


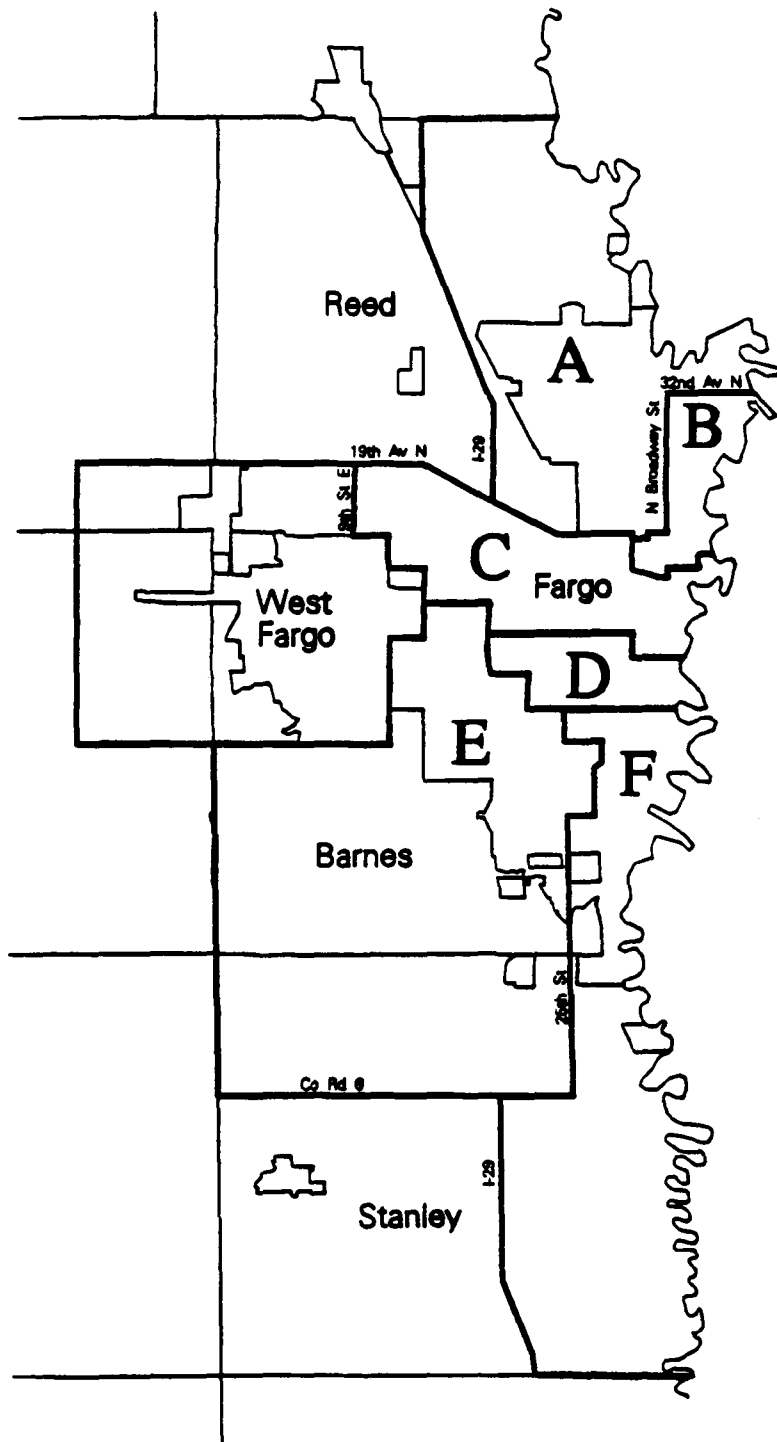


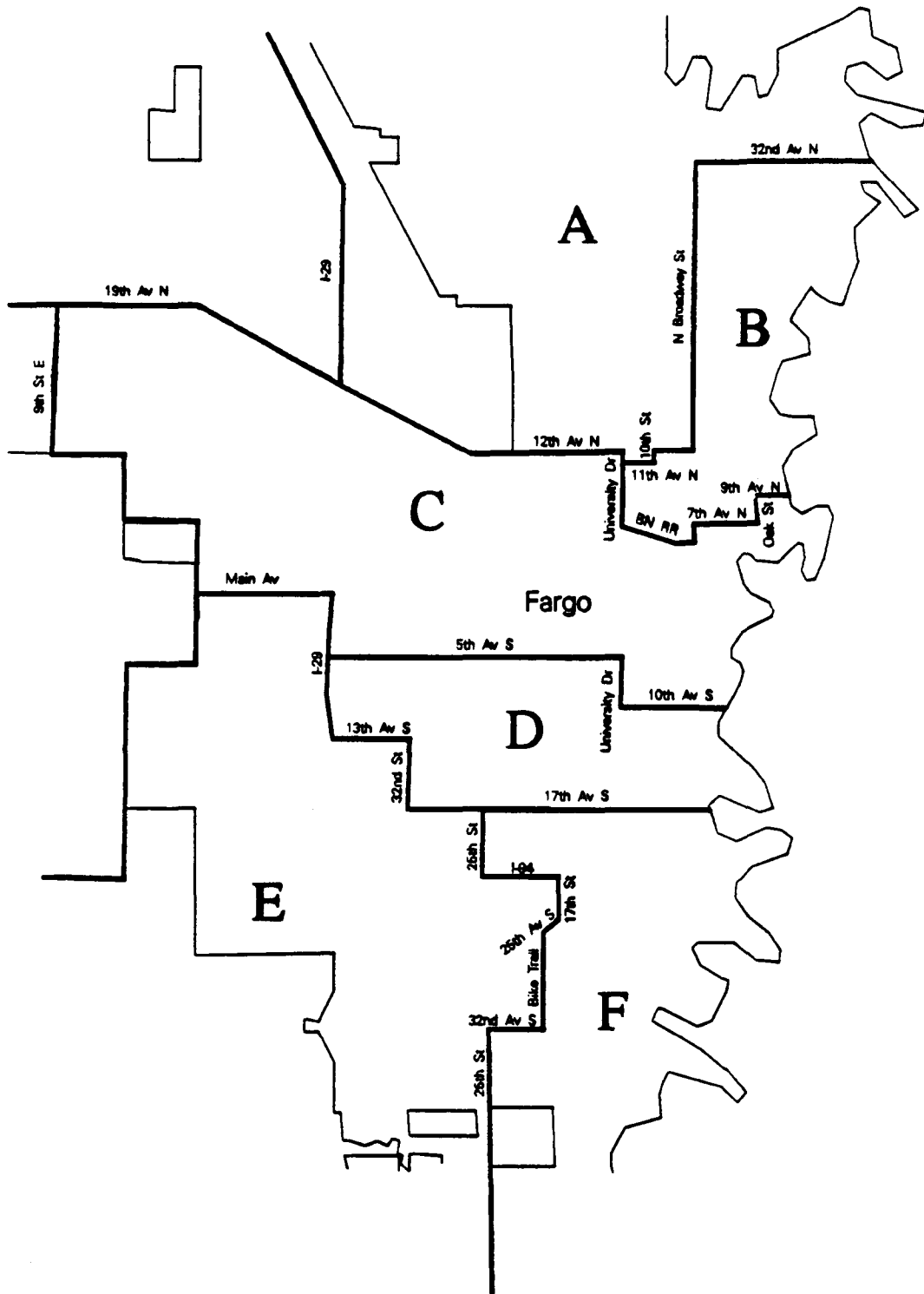


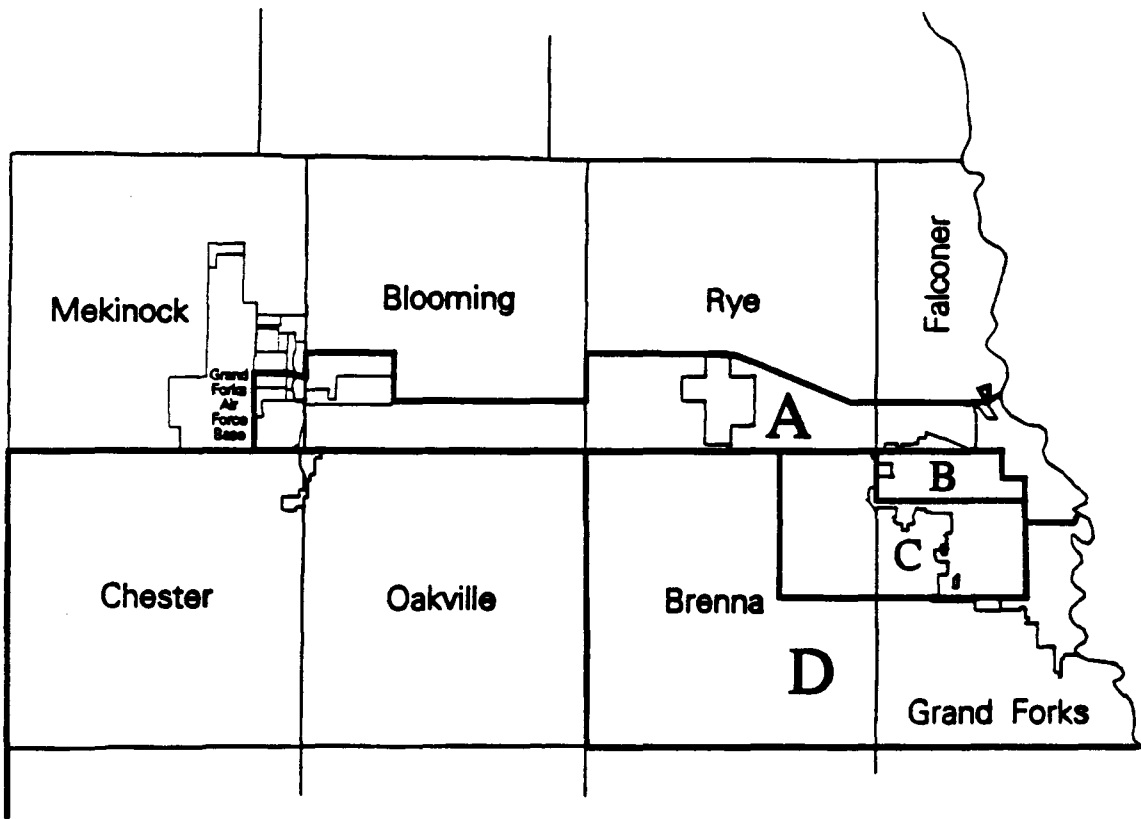


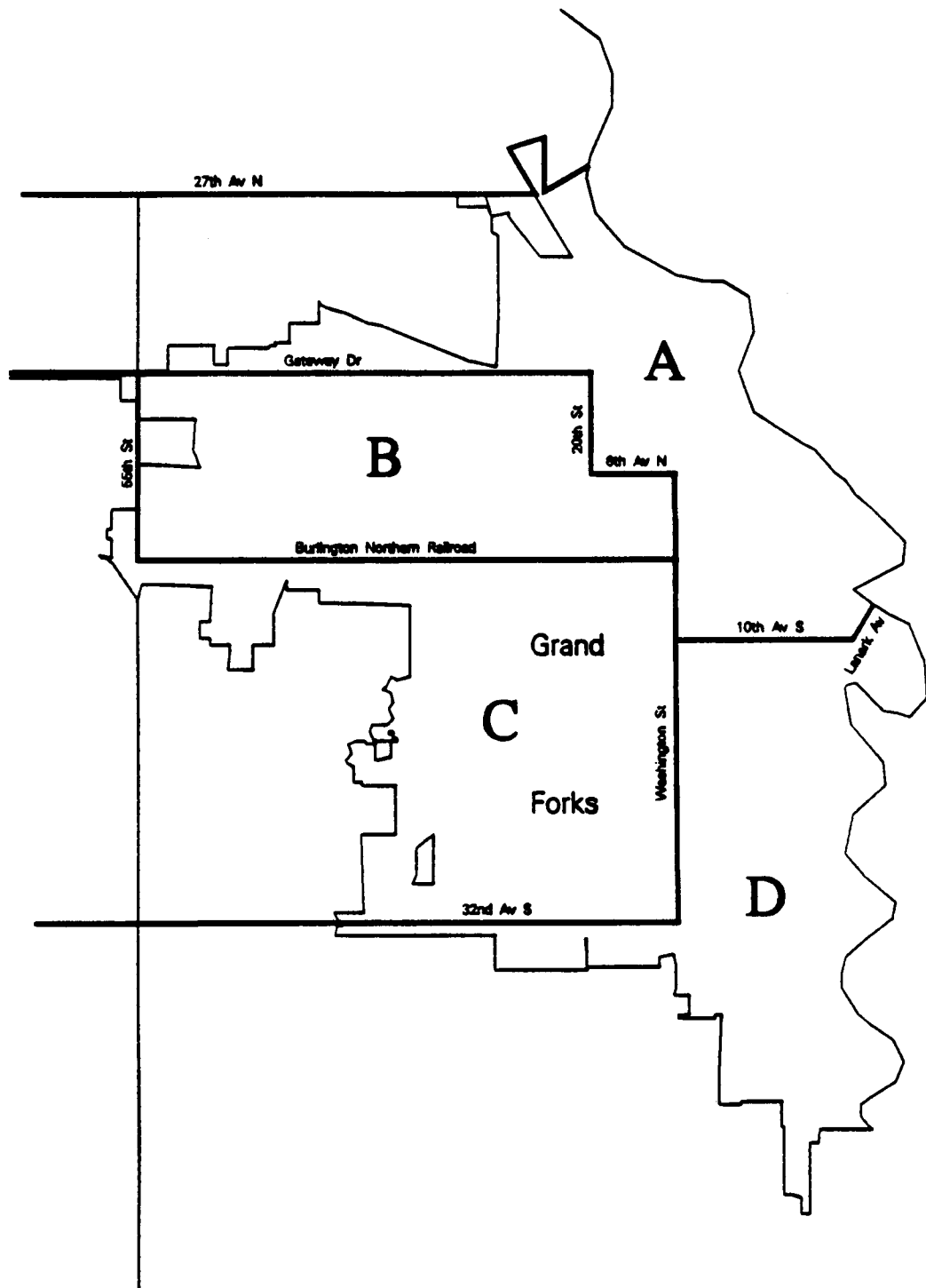




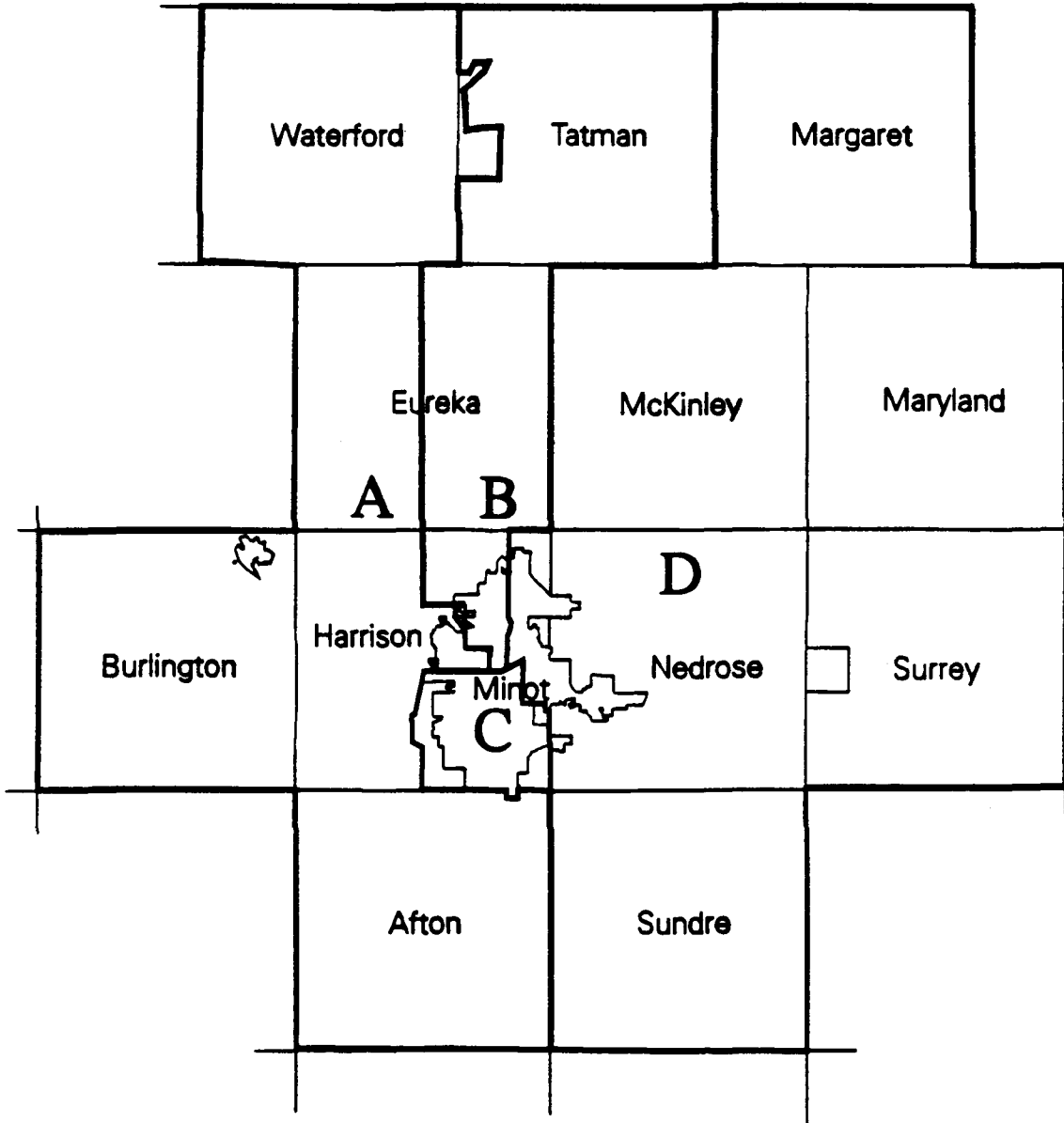






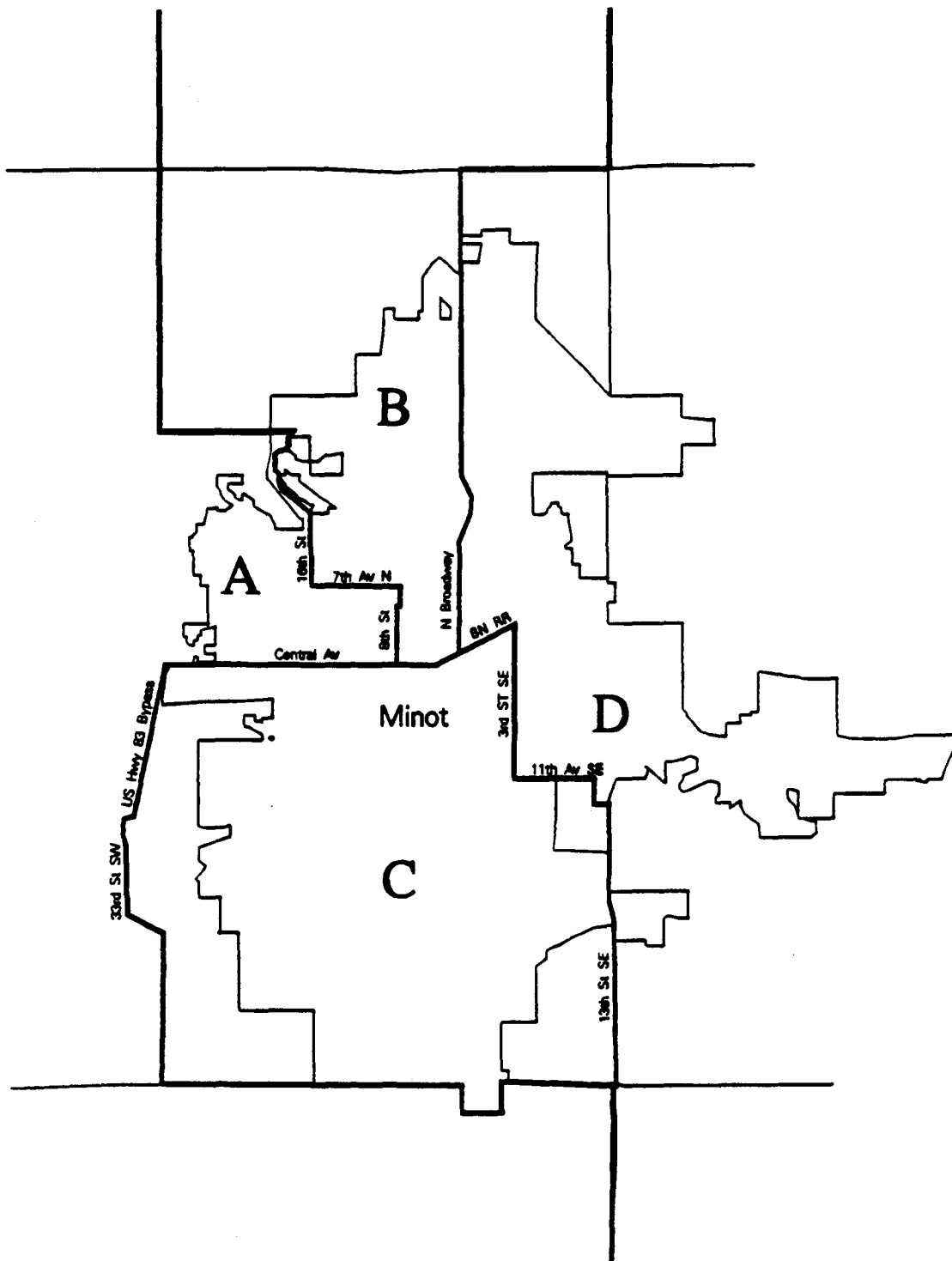


Minot Option 1

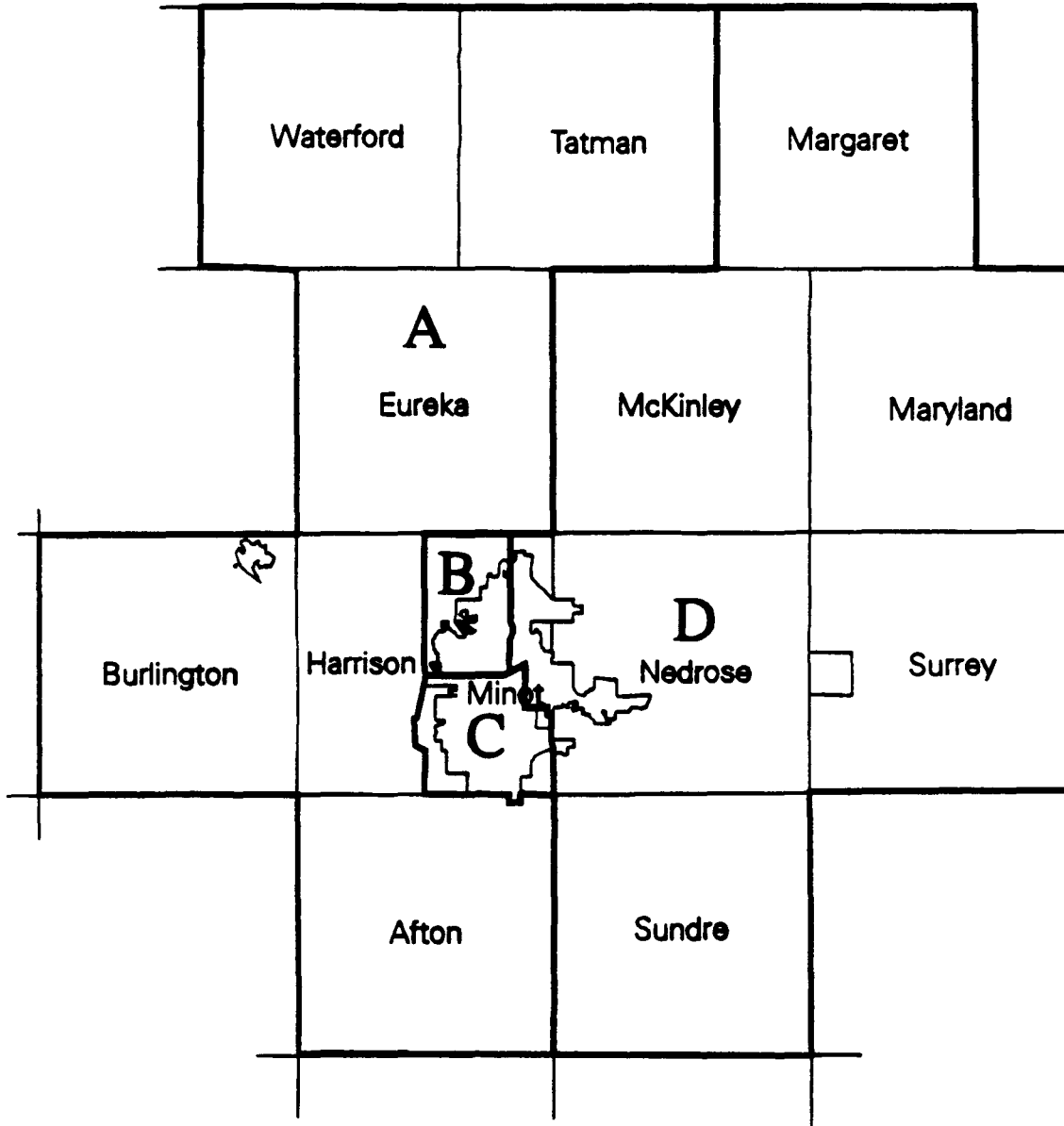




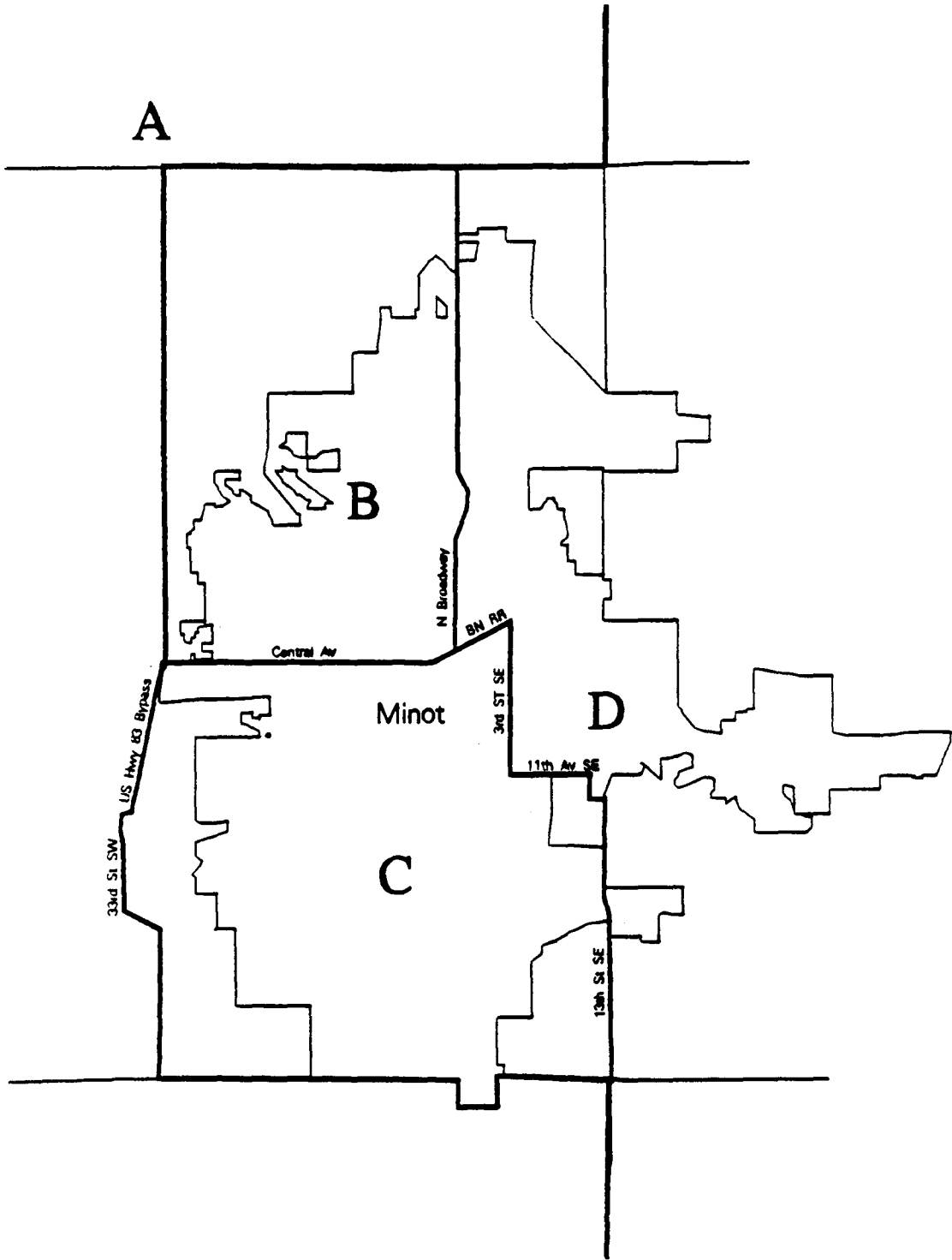
# Minot Option 1



Minot Option 2



# Minot Option 2



# NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned five studies. Senate Concurrent Resolution No. 4039 directed a study of the priority of water rights and North Dakota's water permitting process. Senate Concurrent Resolution No. 4038 directed a study of the methods that could be used to fund and finance critical water projects and programs, including construction of facilities. Senate Concurrent Resolution No. 4075 established a comprehensive statewide water development program and directed a continued investigation of funding and financing this program. House Concurrent Resolution No. 3022 directed a study of the effects of compliance with the federal Safe Drinking Water Act on North Dakota and its communities. Senate Concurrent Resolution No. 4046 directed a study of the feasibility and desirability of adopting an integrated pest management law. The Legislative Council authorized the committee to receive testimony on federal farm programs. The Legislative Council assigned to the committee the responsibility to receive annual reports on land reclamation from the Land Reclamation Research Center of North Dakota State University.

Committee members were Senators Steven W. Tomac (Chairman), Duane L. DeKrey, William G. Goetz, Jerome Kelsh, Byron Langley, Dean Meyer, Duane Mutch, Rolland W. Redlin, Bryce Streibel, John T. Traynor, and F. Kent Vosper and Representatives Ole Aarsvold, Gordon Berg, Jerry Bodine, Grant C. Brown, Loren DeWitz, Lyle L. Hanson, Dale L. Henegar, John Hokana, Eugene Nicholas, Robert E. Nowatzki, Don Shide, and Herb Urlacher.

The committee submitted the "WATER RESOURCE DEVELOPMENT FINANCE STUDY" portion of this report to the Legislative Council at the special meeting of the Council in October 1991. The Council rejected the report submitted in October 1991. The committee submitted the remainder of the report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted that report for submission to the 53rd Legislative Assembly.

## **PRIORITY OF WATER RIGHTS AND NORTH DAKOTA'S WATER PERMITTING PROCESS**

Senate Concurrent Resolution No. 4039 reflected the Legislative Assembly's concern regarding the priority of water rights in North Dakota and North Dakota's water permitting process. This resolution was introduced and subsequently enacted by the 1991 Legislative Assembly as a result of the defeat of 1991 Senate Bill No. 2283. Briefly, Senate Bill No. 2283 would have established the following order of priority of water rights acquired after the Act's effective date: (1) domestic use; (2) municipal use; (3) livestock use; (4) irrigation use; (5) industrial use; and (6) fish, wildlife, and recreation use.

### **Background**

#### **General Water Appropriation Law**

There are generally two systems that govern the appropriation of water in the United States. The

humid eastern states where water resources are more plentiful follow the common law of riparian rights. The arid western states where water resources are more scarce have rejected the doctrine of riparian rights and have adopted the doctrine of prior appropriation.

A riparian right is a right to use a portion of the flow of a watercourse that arises by virtue of ownership of land bordering a stream. The basic principle of the prior appropriation doctrine is that a person may acquire an exclusive right to use a specific quantity of water by applying it to a beneficial use without reference of the locus of the use. An appropriate right is also defined by the time period of use as well as by the quantity claimed. Thus, the prior appropriation doctrine is often known as the first in time first in right water appropriation system. Although the time of the water diversion or appropriation is the salient feature of the prior appropriation doctrine, the water must be put to a beneficial use and the appropriation is limited to the capacity of the diversion works. Under the prior appropriation doctrine a water right may be perfected by: (1) notice of an intent to appropriate; (2) actual diversion; and (3) application of the water to a beneficial use.

North Dakota is a prior appropriation doctrine state. North Dakota Century Code (NDCC) Section 61-04-06.3 provides:

Priority in time shall give the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the state engineer, except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses in which case the priority date shall relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law.

Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of stream flow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire his water under the changed conditions.

#### **North Dakota Water Law**

Although North Dakota is a prior appropriation state, this common law doctrine has been statutorily modified by the requirement that the first in time first in right be measured by the acquisition of a water permit from the State Engineer. North Dakota Century Code Section 61-04-02 requires that an appropriator secure a permit for the beneficial use of water.

If there are competing applications for water from the same source and the source is insufficient to satisfy all the applicants, the State Engineer is to utilize the priority as established by NDCC Section 61-04-06.1 in granting water permits: (1) domestic use; (2) municipal use; (3) livestock use; (4) irrigation use; (5) industrial use; and (6) fish, wildlife, and recreation use. The water appropriated must still be put to a beneficial use in order to secure a valid water right under the prior appropriation doctrine.

## **Priority of Water Rights and the Water Permitting**

### **Processes of Other Western States**

Nearly all of the western states have adopted the prior appropriation doctrine although several, such as California, constructed their prior appropriation systems upon an earlier riparian system when it was discovered that the riparian system does not work well in the arid west. However, even in the dual system states, the prior appropriation doctrine is the key to understanding their water appropriation systems.

#### **South Dakota**

South Dakota Codified Laws Section 46-5-7 provides that "as between appropriators, the first in time is the first in right. The priority of the appropriation shall date from the time of filing of the application therefore in the office of the water management board." Based upon this section, it is clear that South Dakota follows the prior appropriation doctrine and that the priority of the water right is measured from the filing of an application.

#### **Montana**

Montana Code Annotated Section 85-2-401 provides that "as between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of stream flow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions. Priority of appropriation made under this chapter dates from the filing of an application for a permit . . ." Although Montana has a separate system of water courts to adjudicate disputes concerning water in that state, the prior appropriation doctrine is the basis for the allocation of water in Montana.

#### **Wyoming**

Wyoming has also adopted the prior appropriation doctrine. The doctrine is so important that it is in Section 3 of Article VIII of the Constitution of Wyoming. This section provides that "priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests."

### **Testimony**

The committee received testimony from the State Engineer and representatives of the Garrison Diversion Conservancy District, North Dakota Water Users Association, North Dakota Rural Water Systems Association, the Grand Forks-Traill Rural Water Users Association, and the Tri-County Water Users Association. Proponents of reordering North Dakota's water appropriation system to give domestic users an absolute priority indicated that a great deal of money has been invested in water delivery systems by rural water systems and rural water users, as well as municipalities, and this investment must be protected by ensuring that water is available for domestic and municipal uses in the future. Proponents indicated that there is more and more competition for

water in North Dakota which may eventually reach the point in which aquifers are fully allocated and future domestic and municipal water users would be unable to obtain water.

Opponents of reordering North Dakota's water priority system, including the State Engineer and representatives of the Garrison Diversion Conservancy District and North Dakota Water Users Association, indicated that the prior appropriation system is working well in North Dakota. They testified that the prior appropriation system ensures that the highest and best use is made of a scarce and valuable resource such as water. The prior appropriation doctrine protects the investment that water users have made in order to make a beneficial use of water. Also, economic development may be harmed in that people will be hesitant to invest in North Dakota if their water rights are uncertain and may be divested by a subsequent appropriator without the prior appropriator being compensated for that right. Finally, opponents noted that domestic or municipal users could use the power of eminent domain to acquire water rights for domestic or municipal use provided they compensated the prior appropriator for that right.

Water permit hearings are held in Bismarck and notices of water permit applications are printed in newspapers of general circulation in the area of the proposed appropriation site. The committee received testimony that it is difficult and time consuming for people to travel to Bismarck for the hearings and that publishing notices of water permit applications in newspapers of general circulation may not be adequate notice to all people affected by the water permit application.

The committee received testimony from the State Engineer. Approximately 75 to 80 percent of water permit hearings are uncontested and no testimony is taken at the hearings. It is not unusual for these hearings to be unattended and the State Water Commission holds approximately 125 water permit hearings a year and schedules up to three hearings a day. If water permit hearings were to be required to be held in the county seats as opposed to the capital, the State Water Commission may have to add at least one full-time equivalent position to conduct the hearings, and the goal of processing water permit applications in a timely fashion may be impeded if the commission is required to hold its water permit application hearings in the county seats.

### **Committee Considerations**

The committee considered a proposal to require persons applying for water permits to notify all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile from the location of the proposed water appropriation site and all owners or operators of municipal or public use water facilities within a radius of one mile from the location of the proposed water appropriation site. Notice of the application would be published in the official newspaper of the county in which the proposed appropriation site is located, as opposed to a newspaper of general circulation in the area of the proposed appropriation site as required under present law. Also, the water permit

hearing would be held in the county seat of the county in which the proposed water appropriation site is located.

The committee also considered a proposal under which a person applying for a water permit would be required to give notice to all persons holding water permits for the appropriation of water from appropriation sites located in the county in which the proposed water appropriation site is located, and to all owners or operators of municipal or public use water facilities in the county in which the proposed water appropriation site is located. Water permit application notices would be published in the official county newspaper, and water permit hearings would be held in the county seat of the county in which the proposed appropriation site is located.

Under present law, only record title owners of real estate within a radius of one mile from the location of the proposed water appropriation site are required to be given notice of the proposed application. Proponents of these proposals testified that they would ensure that all persons affected by the issuing of a water permit would be notified of the permit application.

### **Recommendation**

The committee recommends House Bill No. 1053 to require persons applying for water permits to notify all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile from the location of the proposed water appropriation site and all municipal or public use water facilities in the county in which the proposed water appropriation site is located. The State Engineer would provide a list of all persons and municipal or public use water facilities that must be notified under the proposal. The State Engineer must publish notice of the application in the official county newspaper in which the proposed appropriation site is located, and if two or more municipal or public use water facilities request a local hearing, the State Engineer must hold the hearing in the county seat of the county in which the proposed water appropriation site is located. This request must be in writing and must be made within 15 days of when the notice of application is mailed by the applicant pursuant to NDCC Section 61-04-05.

## **WATER RESOURCE DEVELOPMENT FINANCE STUDY**

The Council rejected the report on this study in October 1991. The report is printed here pursuant to Rule 5 of the Supplementary Rules of Operation and Procedure of the Legislative Council:

The financing of water projects is a multilevel system consisting of federal, state, local, and private sources. Because of decreased federal participation in funding water projects, including water storage facilities and waste treatment plants, state and local governments will be required to contribute a larger share of the money for necessary capital improvements. In addition, state and local governments must come up with large amounts of capital to respond adequately to water resource needs, both of a water quantity and quality nature.

### **Methods for Financing Water Projects**

The primary means of acquiring capital in a majority of states is by debt financing through the issuance of bonds by state or local governments. The two types of bonds most often used are general obligation bonds and revenue bonds. General obligation bonds are backed by the full faith and credit of the issuer. Because of this backing, these bonds have a favorable interest rate. However, constitutional and statutory limits exist on the amount of debt the issuing governmental entity may incur. Because of the restrictions on the use of general obligation bonds,

many state and local governments use revenue bonds, which are paid exclusively from the earnings of a specific enterprise. Since the full faith and credit of the issuing entity is not pledged, generally fewer restrictions exist on the use of this financing mechanism. The interest rate, however, is not as favorable as that of general obligation bonds.

Some states have established economic development funds to provide state assistance to local governments or private sponsors in the development of water resource development. This assistance may take the form of loans or grants for a portion or all of the costs of the project or purchase municipal bonds for a special municipal project. Another alternative is to use the fund's money for a portion of construction costs, take title to the project, and then sell it back to the sponsor over a long period of time. These funds are financed in several ways—state general obligation bonds, revenue bonds, general fund appropriations, tax revenue surpluses, sales and use taxes, mineral leasing funds, and energy development trust funds.

An alternative to economic development funds is a bond bank. The premise of a bond bank is to improve economic efficiencies by purchasing local bond issues with the proceeds of the bank's bonds. Through a bond bank, the cost to local governments of issuing debt is lowered and the expertise in dealing with debt is improved.

Enterprise authorities are another means by which states can assist local governments in financing water resource projects. At the state level, an authority issues its own bonds, builds projects and leases them to municipalities, makes loans and grants to municipalities, and buys the municipalities' bonds. At the local level, a number of local governments may band together into a quasi-governmental authority with powers to issue its own debt instruments.

A state bond guarantee fund guarantees repayment of all interest and principal on local obligations. The fund lowers the interest rate on locally issued bonds and thus increases their marketability.

One approach to raising capital is to apply user fees—which include power sales revenues, water sales revenues, and recreational facility use charges—to the funding of water projects. This approach shifts a greater burden of project cost to the beneficiaries.

A finance mechanism that has been gaining in popularity is the use of leasing arrangements. The three most commonly used government leasing arrangements are (1) a lease-purchase agreement, in which the governmental entity ultimately acquires the property; (2) an operating lease, in which the governmental entity gets temporary use of the property; and (3) a sales lease-back agreement, in which the governmental entity sells a water facility to a private entity and leases back the system.

An additional financing mechanism is "privatization" of water facilities. Under privatization, private water companies own, develop, and operate water storage and delivery systems.

### **Methods Used to Finance Water Resource Development Projects in Other States**

Montana uses coal severance taxes and oil, gas, and coal extraction taxes to finance water resource development projects. These mineral taxes are placed in a resource indemnity trust fund, which is used to finance a water resource development fund.

Wyoming has dedicated the proceeds of a 1.5 percent excise tax on coal and a 0.167 percent severance tax on oil and gas to fund grants and loans for the construction of water resource development projects.

Utah established a revolving construction loan fund in 1948 to finance irrigation projects. The Utah Legislature appropriated \$1 million a year for several years when the fund was first created in order to establish a financial foundation for the fund. The fund is self-perpetuating and loans moneys at zero interest for a set number of years. Utah established a city water loan program in the early 1970s to finance water resource development projects for cities. In 1978 Utah sold \$70 million in bonds to establish a loan fund for larger water projects. Repayments are used to fund future water resource development projects. The largest loan to date has been \$18 million. The Utah Board of Water Resources also funds state water projects. The state uses general fund moneys to finance 75 percent of the cost of a project by buying bonds from a city or water district or entering into a contract with a private irrigator under a loan buyback or repurchase agreement. The state acquires title to the water rights, right of way, and to the project. Utah also has community impact boards that may be involved in the financing of water resource development projects. The projects are funded with oil and gas lease rentals and bonuses and oil and gas royalties. Projects are constructed in the county where the leases are located or the oil and gas is produced.

The vast majority of water resource development projects in Arizona are cost-share projects entered into by the state with the Bureau of Reclamation pursuant to the Central Arizona Project. However, there are several ground water augmentation projects that are financed by a

pump tax on the pumping of ground water. The maximum pump tax is \$2 per acre foot per year. There are also two local ground water augmentation districts (Tucson and Phoenix) that receive pump tax revenues from the state for use largely for research on ground water recharge projects. Several flood control projects have been funded on a project-by-project basis by appropriations from the Arizona general fund.

South Dakota has established three funds for financing water resource development projects. The consolidated water facilities construction fund is financed by general fund revenues appropriated by the South Dakota Legislature on a year-by-year basis for small water resource development projects. The revolving loan fund is composed of funds received from the Environmental Protection Agency and funds that the state has placed in this fund to match the federal funds to finance wastewater treatment projects. The state water resources management program, which finances rural water systems and flood control projects, uses state assistance as well as federal matching funds.

Water resource development projects in New Mexico are funded through annual appropriations by the New Mexico Legislature.

Texas uses general obligation bonds to finance water resource development projects. Loans are made to local governments for water supply projects.

Idaho does not have any state-sponsored water resource development projects. However, there are several small hydroelectric projects financed with revenue bonds backed by earnings from the sale of power generated by the project. The Idaho Water Resources Board may issue revenue bonds, but the Idaho grant and loan program and Idaho revolving loan program are too small to finance any projects.

Nebraska has established the Nebraska development fund to finance the construction of water resource development projects. This fund is financed from the state general fund. The United States Army Corps of Engineers is cost sharing with the state of Nebraska on three flood control projects—two river levees and the channelization of the Missouri River through Omaha. The portion of the state's share not financed through the Nebraska development fund is financed by the municipality and natural resource district benefited by the project. The local share is financed by property taxes and special assessments of the benefited property.

Missouri has a dedicated sales tax of one-tenth of one percent to fund conservation activities, parks, and resources projects. This dedicated sales tax was adopted as a constitutional amendment in 1984 and was slated to expire after five years. However, the sales tax was renewed by the people of Missouri in 1988 for a period of 10 years and is effective through November 7, 1998.

Colorado has established two mechanisms for financing state water resource development projects. The Colorado Water Conservation Board construction fund is financed by a severance tax on coal and appropriations from the Colorado general fund. The Colorado Natural Resources and Power Development Authority was financed by a \$30 million transfer of state funds when it was established. The authority is authorized to issue revenue bonds for the construction of water resource development projects. Colorado has also entered a joint venture/cost share agreement with the Bureau of Reclamation to construct the Animas LaPlata Project. Under the agreement, Colorado is obligated to finance up to 20 percent of the costs of the project.

Kansas has established a state water plan fund, water marketing program, and a water assurance program that affect the financing of water resource development projects. The state water plan fund is financed from the state general fund, an economic development fund, various user fees, and pollution fines collected by the Kansas Department of Health and Environment. The fund receives approximately \$15 million a year and is used primarily for studying the future water needs of Kansas. Under the Kansas water assurance program, the Kansas Water Office can issue bonds to finance projects to assure local entities of the availability of a water supply. The bonds are financed from the state general fund.

#### **North Dakota Water Resource Programs State Programs**

The State Water Commission has broad powers to develop the waters of the state for domestic, agriculture, and municipal needs; irrigation; flood control; recreation; and wildlife conservation. The commission is authorized under North Dakota Century Code (NDCC) Section 61-02-46 to issue revenue bonds for the purpose of paying the costs of any one or more of the "works" authorized under the chapter and for the purpose of acquiring lands and preparing and developing the lands for irrigation. The term "works" is defined to include property rights, water rights, and the means to conserve, develop, treat, and distribute water. Under NDCC Section 61-02-68.1, the commission may issue interim finance notes to provide owners with tax-exempt

construction period financing for "works."

The State Water Commission is also charged with the planning and construction of the Southwest Pipeline Project. North Dakota Century Code Section 57-51.1-07 allocates 10 percent of the moneys deposited in the oil extraction tax development fund to the sinking fund established for payment of the North Dakota water development bonds, Southwest Pipeline series, and any moneys in excess of that needed to pay the principal and interest on those bonds is deposited in the resources trust fund. The resources trust fund is available by legislative appropriation to the commission for water supply facilities, including rural water systems.

North Dakota Century Code Section 6-09.5-03 establishes in the Bank of North Dakota a community water facility loan fund with a ceiling of \$10 million. All loans from the fund are supplemental to loans made by the Farmers Home Administration. A community water facility loan may not exceed 50 percent of the project costs and is issued at three percent interest.

Under NDCC Section 61-30-03, the State Department of Health and Consolidated Laboratories may issue grants for not more than 25 percent of the project cost for lake protection and rehabilitation purposes. These grants may be issued only when federal funding is available.

North Dakota Century Code Section 61-31-03 establishes the state waterbank program for the acquisition of wetland areas. The 1991 Legislative Assembly appropriated \$50,000 for this program, and the maximum that this program may obtain from private or other sources is \$1 million. No wetland acquisitions have been made under this program.

North Dakota Century Code Chapter 61-29 establishes the Little Missouri River Commission. The purpose of this chapter is to preserve the Little Missouri River as nearly as possible in its present state, which means that the river will be maintained in a free-flowing natural condition.

North Dakota Century Code Chapter 61-28.2 establishes the water pollution control revolving loan fund. This fund is designed to provide funds to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities, and other lawful activities connected with this program. The fund is composed of funds capitalized by federal funds, matching state funds when required, and by any other funds generated by the operation of the revolving loan fund.

North Dakota Century Code Chapter 61-21.1 authorizes the Industrial Commission to issue bonds pursuant to NDCC Chapter 4-36 for the purpose of making loans to lenders and requiring the proceeds of the loans to be used by the lenders to make loans to landowners for water projects. A water project and the cost of works undertaken pursuant to Chapter 61-21.1 must be approved by the State Water Commission before a loan to finance the cost of works is eligible to be made by a lender with the proceeds of a loan from the Industrial Commission.

#### **Local Programs**

North Dakota Century Code Chapter 61-16 creates water resource districts. A district's powers are very broad and generally include the local control and regulation of water within each district. Each district has the power to accept funds from federal, state, public, or private sources and has the power to borrow money for projects undertaken.

North Dakota Century Code Chapter 61-21 governs drainage projects. Under this chapter, drainage projects come under the jurisdiction and administration of water resource districts. Water resource districts may finance drainage projects by the issuance of drainage revenue bonds or warrants.

North Dakota Century Code Chapter 61-07 establishes local irrigation districts that have the general authority to engage in works necessary to establish and construct a complete set of irrigation works. Under this chapter, the irrigation district may plan for the finance of works, which may include issuance of bonds, warrants, and the creation of water user funds to pay for costs from water rentals or user charges. Chapter 61-08 generally governs the fiscal affairs of irrigation districts and provides for irrigation district bonds and improvement warrants.

North Dakota Century Code Chapter 61-12 governs flood irrigation. A board of flood irrigation may assess benefited land for the cost of construction and maintenance of flood irrigation projects. The flood irrigation board may issue bonds and warrants for flood irrigation projects.

North Dakota Century Code Chapter 61-24 creates the Garrison Diversion Conservancy District, which has the general authority and duty to promote the establishment and construction of the Garrison Diversion Unit of the Missouri River Basin Project. Under this chapter, the district may levy one mill annually within the district to pay expenses and accumulate funds for district purposes.

North Dakota Century Code Chapter 61-24.2 establishes the West

River Water Supply District. The general purpose of this district is to seek a dependable, long-term supply of water from the Missouri River utilizing a pipeline transmission and delivery system for purposes including domestic, rural water districts, municipal, livestock, irrigation, light industrial, mining, recreational, fish and wildlife, and pollution abatement uses, with primary emphasis on domestic, rural water districts, and municipal uses. The district has the power to levy taxes not to exceed one mill on each dollar of taxable property in the district for payment of expenses and for the accumulation of a fund to pay obligations incurred by the district.

North Dakota Century Code Chapter 61-04.1 creates the Atmospheric Resource Board as a division of the State Water Commission. In addition, Section 61-04.1-23 authorizes the creation of local weather modification authorities. These authorities may certify annually to the board of county commissioners a tax of up to seven mills to be used only for weather modification activities in conjunction with the state.

North Dakota Century Code Chapter 40-05 generally outlines the powers of municipalities. Municipalities may engage in activities necessary to supply water reasonably sufficient for the needs of the habitants of the city. Under Section 40-05-01, a city has broad authority to finance water projects. A city may borrow money on the credit of the corporation for corporate purposes and may issue bonds as limited by NDCC Title 21. The city may also issue refunding bonds and certificates of indebtedness as provided and limited in Title 21.

#### Private Water Development

North Dakota Century Code Chapter 61-13 authorizes the existence and formation of private irrigation corporations. These corporations may borrow amounts, whether in excess of capital stock or not, for corporate purposes.

An additional private source of water development is the rural water system. A rural water system engages in the planning and construction of water systems for their members, who pay for the services provided. The State Water Commission is empowered to render assistance to rural water systems and is specifically authorized under NDCC Section 57-51.1-07 to utilize a portion of the resources trust fund for rural water systems.

#### Governor's Water Strategy Task Force

In April 1991 the Governor issued Executive Order No. 1991-3, which established the Governor's Water Strategy Task Force. The mission of the Water Strategy Task Force was to:

1. Review funding options to implement existing water policies of the state in water-related political subdivisions.
2. Develop, by October 1, 1991, a water development program and a funding strategy for submission to a special session of the Legislative Assembly in late 1991.
3. Develop, by December 1, 1991, a plan for advocating a comprehensive state water policy to the administration and to Congress.

The Water Strategy Task Force was composed of people representing different interests concerned with water resource development throughout the state.

The Water Strategy Task Force held a number of public meetings throughout the state to solicit viewpoints on water problems and water development issues. The task force attempted to determine (1) whether there is a need for water development in the state, and if so, then (2) should the state do more to develop its water resources, and if so, then (3) how should this be done and how should these projects be financed? The task force reported to the committee that there is a definite need for water development in the state, and the people believe the state should do more to develop its water resources, especially to preserve its rights to the Missouri River water.

The Water Strategy Task Force formed subcommittees on program costs, financing, and program benefits. The Task Force Subcommittee on Program Costs identified various necessary water projects and the costs of constructing these projects.

#### Task Force Subcommittee on Program Costs

The Task Force Subcommittee on Program Costs determined that the majority of urban and rural water supplies in the state are inadequate to satisfy fully the needs of the citizens of the state. The subcommittee determined that in addition to water quantity problems, a number of water supplies violate standards set by the United States Environmental Protection Agency under the Safe Drinking Water Act. The subcommittee also determined that as water supply systems seek to comply with other recently enacted federal water quality standards, additional costs will be incurred. The subcommittee also determined that under the prior appropriation doctrine the state of North Dakota must put the waters of the Missouri River to a beneficial use in order to

preserve the state's right to the water.

After reviewing the Comprehensive Water Management Plan prepared by the State Engineer and the information gathered by the Water Strategy Task Force, the Task Force Subcommittee on Program Costs developed a list of 11 projects it determined were necessary to satisfy the state's water needs. The projects include those related to the Garrison Diversion Unit Project, the Southwest Pipeline Project, the State Water Commission's contract fund, the Northwest Area Water Supply Project, and the establishment of a water supply development fund. The following tables prepared by the Subcommittee on Program Costs indicate the amount of state funds needed for each of the program elements and the totals through the years 2000 and 2016:

#### Short-Term Development Through Year 2000 (In millions)

|   | Federal        | State          | Total          |
|---|----------------|----------------|----------------|
| Municipal, rural, and industrial water supply program | \$ 63.8        | \$ 34.2        | \$ 98.0        |
| Mid-Dakota Reservoir                                  | 22.8           | 12.1           | 35.0           |
| Canal maintenance and rehabilitation                  | 13.3           | 7.1            | 20.4           |
| James River   | 4.4            | 2.4            | 6.8            |
| Sheyenne River and Devils Lake                        | 49.0           | 26.5           | 75.5           |
| Turtle Lake irrigation                                | 22.1           | 11.9           | 34.0           |
| Williston irrigation                                  | 16.3           | 8.7            | 25.0           |
| Southwest Pipeline Project                            | 58.3           | 20.5           | 78.8           |
| Contract fund   |                | 29.8           | 29.8           |
| Northwest area water supply <sup>1</sup>              | 80.0           | 13.7           | 93.7           |
| Water supply development fund <sup>2</sup>            |                | 80.0           | 80.0           |
| <b>Total</b>  | <b>\$330.0</b> | <b>\$247.0</b> | <b>\$577.0</b> |

<sup>1</sup> Northwest area water supply construction would start in the year 1996 and would be completed in 2004.

<sup>2</sup> Approximately \$9 million per year would go into the water supply development fund to create a self-sustaining fund for future municipal, rural, and industrial water supply projects.

#### Long-Term Development Beyond Year 2001 to Year 2016 (In millions)

|   | Federal       | New State          | Repayments and Interest <sup>1</sup> | Total          |
|---|---------------|--------------------|--------------------------------------|----------------|
| Municipal, rural, and industrial water supply | \$27.8        |                    | \$160.2                              | \$188.0        |
| Contract fund                                 |               | 56.02 <sup>2</sup> | 16.7                                 | 72.7           |
| Northwest area water supply                   | 70.0          |                    | 12.6                                 | 82.6           |
| <b>Total</b>                                  | <b>\$97.8</b> | <b>\$56.00</b>     | <b>\$189.5</b>                       | <b>\$343.3</b> |

<sup>1</sup> Because of loan repayments and interest revenue to the water supply development fund, the fund remains nearly constant and allows for an annual expenditure of approximately \$11.7 million.

<sup>2</sup> Contract fund appropriations would come from the resources trust fund.

#### Task Force Subcommittee on Financing

Based upon the findings of the Task Force Subcommittee on Program Costs that \$22 million per year (in addition to authorized revenue to the resources trust fund and income from project loan repayments and other revenues) would be needed to meet the water program needs of the state through the year 2016 and beyond, the Task Force Subcommittee on Financing developed a funding proposal. The Subcommittee on Financing considered these factors: (1) the revenue package should generate \$22 million per year for the proposed water development program; (2) the proposed water development program would benefit all areas of the state, and all residents should contribute to the program; (3) the proposed water development program should be initiated now, and the revenues should be realized as soon as possible; (4) any tax should automatically terminate at the end of 1999; (5) the revenues should not be based on a single tax; and (6) funds generated by the revenue package should be deposited in the resources trust fund.

A .25 percent increase in the state sales tax would generate approximately \$12 million per year, an increase in the individual income tax rate from 14 percent of federal income tax liability to 15 percent of federal liability would generate approximately \$8.5 million per year, and a five percent surcharge on corporate income tax would raise approximately \$2.25 million per year.



### **Task Force Subcommittee on Program Benefits**

The Task Force Subcommittee on Program Benefits identified the short-term and long-term benefits of the water supply projects identified by the Task Force Subcommittee on Program Costs. Short-term benefits were defined as dollars of increased economic activity resulting from the expenditure of federal dollars on construction projects in North Dakota. Long-term benefits were defined as benefits derived from the use of water supply projects after construction has been completed as well as benefits from irrigation, recreation, wildlife, and water use for municipal, rural, and industrial purposes. The identified short-term benefits are approximately \$806.5 million and the creation of 12,184 jobs for the period 1992 through 2000. The identified long-term benefits are \$140.4 million per year and the creation of 2,097 jobs per year for the year 2000 and beyond. The long-term benefits only include those benefits that would be recognized from the proposed irrigation projects and the recreation and wildlife benefits of the projects proposed by the Water Strategy Task Force. The benefits that would be recognized from the proposed municipal, rural, and industrial water supply projects were not quantified. However, three primary benefits that would be recognized from these projects are improvement in water quality, increase in water quantity, and improvement in the reliability of water quality and quantity. These primary benefits of municipal, rural, and industrial water supply projects translate into several intangible benefits, including improved health; enhanced quality of life; private economic considerations that include the fact that municipal, rural, and industrial water may be the least-cost alternative to meet United States Environmental Protection Agency safe drinking water standards, to increase useful life of water supply equipment, and to retain property values; and economic development for the state.

### **Recommendations of the Water Strategy Task Force**

The Water Strategy Task Force recommended a proposal that contained a statement that outlined the specific objectives of the proposal, and contained a .25 percent increase in the state sales tax, a 7.5 percent surcharge on individual income tax liability, and a five percent surcharge on corporate income tax liability. Under the proposal the revenue generated by the taxes would be placed in the resources trust fund and made available for appropriation by the Legislative Assembly for constructing water-related projects, including rural water systems. The tax increases would be effective for taxable years beginning after December 31, 1991, and would expire on December 31, 1999.

### **Testimony and Committee Considerations**

In addition to testimony presented by members of the Water Strategy Task Force, the committee received testimony from other entities and individuals interested in the water resource development finance study. Representatives of the North Dakota Water Users Association, North Dakota Water Resource Districts Association, State Water Commission, Garrison Diversion Conservancy District, Three Affiliated Tribes, Grand Forks-Traill Water Users Association, and North Dakota Rural Water Users Association testified in support of the recommendations of the Water Strategy Task Force. However, the North Dakota Water Users Association favored a .5 cent increase in the state sales tax as opposed to the tax mix contained in the task force recommendations.

A representative of the Greater North Dakota Association testified that although the association is committed to the development and funding of water resources in the state and that utilization of Missouri River water is essential to long-term growth for the state's economy, the Greater North Dakota Association opposed the recommendations of the Water Strategy Task Force. Rather than establishing a dedicated tax for one use, it was suggested that the state should prioritize funding by weighing all projects against one another. In addition, it was suggested that consideration of an increase in the state sales tax of .5 cent, elimination of the restrictions on bonding contained in the state constitution, or user fees may be preferable to the recommendations formulated by the Water Strategy Task Force. It was also suggested that this issue not be addressed until the 1993 legislative session.

In addition to the recommendations of the Water Strategy Task Force, the committee considered a proposal to provide a contingent transfer to the resources trust fund. Under the proposal, on August 1, 1993, the State Treasurer would transfer to the resources trust fund any unobligated balance in excess of \$30 million in the general fund in the state treasury at the end of the 1991-93 biennium. For purposes of this transfer, the ending balance would be determined prior to any transfers to the regional development loan fund pursuant to 1991 Session Laws, Chapter 130. Under the proposal, the transfer could not exceed \$22,750,000.

### **Recommendations**

The committee recommends a bill to increase the state sales tax from five percent to 5.25 percent, plus a 7.5 percent surcharge on

individual income tax liability, and to place a five percent surcharge on corporate income tax liability. The revenue realized as a result of the bill is to be placed in the resources trust fund for appropriation by the Legislative Assembly for constructing water-related projects, including rural water systems. The bill is generally effective for taxable years beginning after December 31, 1991, and expires December 31, 1999.

The committee recommends a bill to provide a contingent transfer of up to \$22,750,000 to the resources trust fund of any unobligated balance in excess of \$30 million in the general fund at the end of the 1991-93 biennium. The ending balance for purposes of this transfer is to be determined prior to any transfers to the regional development loan fund pursuant to 1991 Session Laws, Chapter 130.

## **COMPREHENSIVE STATEWIDE WATER DEVELOPMENT PROGRAM FUNDING STUDY**

Senate Concurrent Resolution No. 4075 established a comprehensive statewide water development program and directed the Legislative Council to continue to investigate and recommend a program or programs for funding and financing this comprehensive statewide water development program. This resolution was passed by the Legislative Assembly during its special session in November 1991.

### **Testimony and Committee Considerations**

The committee considered a proposal that would have implemented a one-half cent increase in the state sales and use tax with the proceeds dedicated for water development. The revenue realized as a result of the proposal would have been placed in the water resources development trust fund. The proposal would also have appropriated \$44 million from the water resources development trust fund to the State Water Commission to fund the Garrison Diversion Project, Devils Lake stabilization, the Southwest Water Pipeline, the Northwest Area Water Supply Project, and other major water projects of statewide or regional significance for the biennium beginning July 1, 1993, and ending June 30, 1995. This proposal was based on revenue projections received from representatives of the Governor's Water Strategy Task Force in September 1991 and based upon information provided by the Tax Commissioner. The State Tax Commissioner provided a revised estimate later in the interim that a one-half cent increase in the state sales and use tax would generate approximately \$27 to \$29 million a year.

Proponents of an initiated measure to establish water development objectives and impose a one-half cent sales and use tax reported to the committee that the measure had been filed with the Secretary of State and placed on the ballot for the November 3, 1992, general election. Proponents testified that only those water projects that states participate in along with the federal government or its agencies are being constructed and moving forward. Such projects include the Mni Wiconi Project and WEB Municipal, Rural, and Industrial Water Supply Project in South Dakota, the Buffalo Bill Project in Wyoming, the Animas LaPlata Project in Colorado and New Mexico, the Central Utah Project in Utah, and the Central Arizona Project in Arizona. Proponents of the initiated measure indicated that the comprehensive statewide water development strategy contained in the initiated measure envisioned that the plan would establish North Dakota's claim to its proper share of the Missouri River, complete the Southwest Pipeline

Project, develop the Northwest Area Water Supply Project, provide a state cost-share to complete the Garrison Diversion Unit, deliver Missouri River water to stabilize Devils Lake, provide water for multiple uses for the James, Sheyenne, and Red rivers, establish a revolving fund for municipal, rural, domestic, and industrial water supply distribution needs, provide water for irrigation, and develop local water management and water recreation facilities in North Dakota. The revenue realized from the tax would be placed in the resources trust fund and used for water development and water management projects. The proposed tax would be effective from January 1, 1993, through December 31, 1999.

### **Conclusion**

The committee makes no recommendation concerning the establishment of a comprehensive statewide water development program or a program or programs for funding and financing this comprehensive statewide water development program, in light of the fact that an initiated measure relating to water resource development finance was placed on the November 1992 general election ballot.

### **SAFE DRINKING WATER ACT STUDY**

House Concurrent Resolution No. 3022 reflected the Legislative Assembly's concern regarding the effects of compliance with the federal Safe Drinking Water Act on North Dakota and its communities.

### **Background**

#### **Safe Drinking Water Act**

The Safe Drinking Water Act was enacted by Congress in 1974. The Act was amended in 1977 and substantially amended in 1986. The purpose of the Act is to assure that all citizens served by public water systems would be provided high quality water supplies. Although primary enforcement responsibility for the Act has been delegated to the states, the administrator of the Environmental Protection Agency is charged with adopting regulations to implement the Act. Although the states are charged with enforcing compliance with the Act, the administrator of the Environmental Protection Agency may bring an action in the United States District Court to enforce the regulations adopted under the Act. Persons found in violation of the Act are liable for a civil penalty of up to \$25,000 per day of violation.

A public water system is a system for the provision to the public of piped water for human consumption, if the system has at least 15 service connections or regularly serves at least 25 individuals. A primary drinking water regulation is a regulation that applies to public water systems and specifies contaminants that may have an adverse effect on human health. The regulation must specify the maximum contaminant level or a treatment technique known to lead to the reduction in the level of the contaminant for each contaminant.

The national primary drinking water regulations apply to each public water system in each state except to public water systems that consist only of distribution and storage facilities; that obtain all of their water from, but are not owned or operated by, a public water system to which the regulations apply; that do not sell water to any person; and that are not carriers

that convey passengers in interstate commerce. The regulations are to be formulated by the administrator of the Environmental Protection Agency and are required to include maximum permissible contaminant levels and to specify the use of treatment techniques.

Under the 1986 amendments to the Act, the Environmental Protection Agency may issue administrative orders and assess fines for violations in instances in which a state has failed to act. However, states are authorized to grant variances to public water systems if a system cannot meet the requirements respecting maximum contaminant levels because of the characteristics of the raw water sources that are reasonably available to the system. Finally, a state may exempt any public water system within the state's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national primary drinking water regulation if the state finds that (1) due to compelling factors (which may include economic factors) the public water system is unable to comply with the contaminant level or treatment technique requirement; (2) the public water system was in operation on the effective date of the contaminant level or treatment technique requirement; or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to the new system; and (3) the granting of the exemption will not result in an unreasonable risk to health. However, if the state grants an exemption the state must also prescribe a schedule for compliance and implementation of control measures.

The administrator of the Environmental Protection Agency is required to publish proposed regulations for state underground injection control programs. The Act specifically provides that regulations of the administrator for state underground injection control programs may not prescribe requirements that interfere with or impede the underground injection of brine or other fluids that are brought to the surface in connection with oil or natural gas production or natural gas storage operations or any underground injection for the secondary or tertiary recovery of oil or natural gas unless the requirements are essential to assure that underground sources of drinking water will not be endangered by the injection.

The administrator of the Environmental Protection Agency may take action if a contaminant that is present in or is likely to enter a public water system or underground source of drinking water poses an imminent and substantial endangerment to the health of persons and that the appropriate state and local authorities have not acted to protect the health of these persons.

The Act also contains provisions to assure the availability of adequate supplies of chemicals necessary for the treatment of water, establish research and technical assistance programs, establish grants for state programs, authorize grants for special studies and demonstration projects, and outline recordkeeping and inspection requirements. The Environmental Protection Agency has established a program to make grants to states to implement a program to protect underground drinking water sources. Federal assistance under this program may

not exceed 75 percent of the allowable cost of each state's Environmental Protection Agency approved underground water source protection program. In addition, a state receiving a grant under this program must assume primary enforcement responsibility for its underground water source protection.

### **North Dakota Safe Drinking Water Act**

North Dakota Century Code Chapter 61-28.1 contains the North Dakota Safe Drinking Water Act, which was enacted in 1977. The Department of Health and Consolidated Laboratories is charged with administering and enforcing a safe drinking water program. The department is designated as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefits of that Act and any grants made under it. The department may also provide technical assistance to municipalities and adopt rules relating to maximum contaminant levels, monitoring and analytical requirements and reporting, public notification, and recordkeeping that the department determines are necessary to protect public health and welfare. The department is also empowered with authority to adopt rules relating to the siting, construction, operation, and modification of public water systems which the department determines are necessary to prevent violation of maximum contaminant levels.

Under NDCC Chapter 61-28.1 no person may construct, install, modify, use, or operate a public water system without prior approval from the department or in violation of the terms of, conditions imposed upon, or order of the department concerning the approval. However, the department is authorized to grant variances and exemptions provided they are accompanied by a compliance time schedule requiring compliance within such time as the department determines.

### **Compliance With the Safe Drinking Water Act: State Legislative Options**

The committee reviewed a report prepared by the National Conference of State Legislatures in February 1990 entitled "Compliance with the Safe Drinking Water Act: State Legislative Options." This report cites a joint Environmental Protection Agency-American Society of Drinking Water Administrators August 1989 report entitled "State Costs of Implementing the 1986 Safe Drinking Water Act Amendments" that estimates the cost of complying with the 1974 Safe Drinking Water Act for all states at \$129 million per year. This report noted that actual state expenditures totaled \$95 million, leaving a \$34 million shortfall. Typical drinking water program components requiring funding include inspections and sanitary surveys, program management and administration, engineering plan and review, laboratory capability, data management and reporting, technical assistance, and enforcement. The report notes that a yearly total of \$281 million will be necessary to comply with the provisions of the 1986 Safe Drinking Water Act amendments.

The Environmental Protection Agency has stated

that "a well-structured fee, where there is a clear relationship between the demand for services and the cost of providing them, is the most equitable means of matching program costs with those responsible for or those benefiting from program activities." Oklahoma and Arkansas are examples of states that have implemented fees to fund their safe drinking water programs.

Another method of financing compliance with the Act is the implementation of a tax or the dedication of a portion of a state's income or sales tax to funding programs to comply with the Act. New Jersey is an example of a state that has enacted a tax to pay for covering the expenses of complying with and administering the Act.

The National Conference of State Legislatures report identified bonding as an option. The report notes that although bonding is an excellent method of raising funds for capital construction, it is ill-suited for defraying the administrative expenses associated with complying with the Act. California is an example of a state that has passed a water bond issue to provide funds for grants and loans to local water systems.

The National Conference of State Legislatures report also identifies state revolving funds as a potential source of financial assistance to local water utilities. Under a state revolving fund, the fund would provide loans to a utility that would then repay the loan with revenues generated from its services. The loan would be repaid under a more favorable interest rate than could be obtained commercially. Alabama and New Jersey have created state revolving funds for safe drinking water purposes.

Although not created to provide funds for compliance with the Act, North Dakota has enacted a water pollution control revolving loan fund. The fund is maintained and operated by the Department of Health and Consolidated Laboratories with grants from the federal government and state matching funds. Money in the fund is required to be expended in a manner consistent with the terms and conditions of the grants and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary or the North Dakota Municipal Bond Bank; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects; to improve credit market access by guaranteeing or purchasing insurance or other credit en-

hancement devices for local obligations or obligations of a public trust having the state of North Dakota as beneficiary or the North Dakota Municipal Bond Bank; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the Department of Health and Consolidated Laboratories associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law.

### **Testimony and Committee Considerations**

Representatives of the Department of Health and Consolidated Laboratories testified that the 1986 amendments to the Safe Drinking Water Act are having and will continue to have a significant impact on the 730 public water supply systems in North Dakota. Under the Act, the 31 regulated contaminants will increase to 64 by January 1, 1993, and to 200 by the year 2000. Twenty public drinking water supply systems are not in compliance with the standard for fluoride, and these communities will have to either implement expensive and resource-intensive treatment procedures or find alternative sources of water. A total of 30 communities are in violation of safe drinking water standards in North Dakota.

The testing and monitoring requirements as a result of the 1986 amendments to the Act are having a significant impact on the Department of Health and Consolidated Laboratories. Although the department is not considering implementing any new testing fees, the department indicated that it will need two additional employees for the remainder of the 1991-93 biennium, an additional five employees for the 1993-95 biennium, and an additional two to four employees for the 1995-97 biennium to implement the Act. The estimated additional cost of complying with the Act is approximately \$500,000 a year for the department. Representatives of the department testified that the department is anticipating adding several positions to the Municipal Facilities Division in order to retain primacy for the administration and enforcement of the Act in North Dakota with the department. The additional positions would be transferred to the Municipal Facilities Division from the Laboratories Division and funded from internal moneys and not user fees or additional general fund sources.

The committee received testimony from representatives of the Energy, Science, and Natural Resources Program, National Conference of State Legislatures, that states are facing three primary issues in implementing the Act. The first issue is the funding of staff and the establishment of revolving loan funds to allow small municipalities to finance facilities necessary to comply with the Act. The second issue is that states must implement procedures to ensure that small drinking water systems remain viable. The final issue concerns enforcement, i.e., primacy. States have explored a number of alternative funding mechanisms to finance the administration and enforcement of the Safe Drinking Water Act. Sixteen states have implemented service fees, eight states have implemented plan review fees, 17 states have implemented operator certification fees, four states have implemented laboratory certification fees, seven states

have implemented construction permit fees, and seven states have implemented connection fees. Iowa has adopted both operator certification fees and construction permit fees. These fees defray one-half the costs of the safe drinking water program in Iowa. In 1991 Montana enacted legislation that established a fee of \$2 per service connection for each public water system in Montana (a minimum of \$100 per year per system). The fee is projected to generate \$639,488 in fiscal year 1992 and \$637,613 in fiscal year 1993. The revenue from this fee is placed in a special fund to be used for administration and enforcement of the Act in Montana.

In 1990 the Nevada Legislative Subcommittee on Water and Wastewater Resources made extensive recommendations for legislation to be introduced in 1991. One major determination of this subcommittee was that Nevada retain primacy for administration and enforcement of the Safe Drinking Water Act. During the 1991 legislative session, Nevada established a revolving loan fund for capital improvements to drinking water systems and authorized the issuance of \$100 million in state revenue bonds for systems that serve fewer than 6,000 people. Nevada also implemented a fee for public water supply operators, the revenue from which is used to finance compliance with the Safe Drinking Water Act in Nevada.

Perhaps the most important issue facing states is the issue of primacy, i.e., whether the state or the Environmental Protection Agency will enforce compliance with the Safe Drinking Water Act within a state. The Environmental Protection Agency has divided the country into regions, and North Dakota is in Region VIII. Region VIII has been more flexible than other regions in the country, in that if a state shows the ability, desire, and a degree of commitment to comply with the Act, the Environmental Protection Agency has not withdrawn primacy but has allowed the state to continue to administer and enforce the Act. If the state fails to properly administer the Act, the Environmental Protection Agency will withdraw primacy for enforcement and administration of the Act and assume jurisdiction and enforce the Act. Representatives of the Department of Health and Consolidated Laboratories, the North Dakota Rural Water Systems Association, the National Conference of State Legislatures, and the Environmental Protection Agency said it is advantageous for the states to retain primacy because the states are more flexible in administering and enforcing the Act than the Environmental Protection Agency would be if it is forced to withdraw primacy and administer and enforce the Act.

If the Environmental Protection Agency withdraws primacy, the state loses the amount of the federal grant to run its safe drinking water program. In fiscal year 1992 the amount of the Environmental Protection Agency grant to North Dakota was \$556,934, which is 75 percent of the state program budget of \$742,599 for the first year of the 1991-93 biennium.

Concerning the issue of primacy, the committee received information on the implementation and enforcement of the 1986 amendments to the Act in Wyoming. Wyoming has never had primacy for enforcement of the Safe Drinking Water Act, and this function is performed by the Environmental Protec-

tion Agency's Region VIII office in Denver. Representatives of the Wyoming Health Department indicated that not having primacy for enforcement of the Safe Drinking Water Act in Wyoming has actually saved the state money. The officials indicated that the major problem in not having primacy is communicating with the Region VIII office in Denver. There have been several notices of violation issued in Wyoming by the Environmental Protection Agency, but no fines have been levied to date. Violations involve lack of sampling and not sending samples or sample reports to Denver in a timely fashion. The violations usually involve small communities, small subdivisions, or mobile home parks.

Representatives of the Department of Health and Consolidated Laboratories also briefed the committee on the activities of the Governors' Forum on Environmental Management which had been established by the administrator of the Environmental Protection Agency to monitor the administration and implementation of the Act. The Governors' forum is in the process of exploring whether states should be allowed to conduct preliminary monitoring to determine whether a particular drinking water rule or further drinking water requirements need to be implemented within each state, whether states should be allowed flexibility to apply the rules to regions within each state that have documented drinking water problems, and whether the Environmental Protection Agency should lengthen the time schedule within which each state must adopt safe drinking water rules. The Governors' forum is concentrating on three primary areas concerning administration and implementation of the Act. These areas include increasing the resources available to implement the Act, increasing program efficiency, and recommending various statutory changes.

The committee considered a resolution urging Congress to moderate enforcement of the Safe Drinking Water Act.

### **Recommendations**

The committee recommends that North Dakota retain primacy for administration and enforcement of the Safe Drinking Water Act.

The committee recommends Senate Concurrent Resolution No. 4008 to urge Congress to moderate enforcement of the Safe Drinking Water Act.

### **INTEGRATED PEST MANAGEMENT**

Senate Concurrent Resolution No. 4046 was passed as a result of the defeat of 1991 Senate Bill No. 2224, which would have established integrated pest management districts in North Dakota.

#### **Pest Management in North Dakota**

There are a number of disparate provisions in North Dakota law that govern the management or control of pests. A pest may be defined as any insect, nematode, disease, weed, animal, or bird that is detrimental to the production of crops or livestock or to stored crops. North Dakota Century Code Section 4-01-17.1 authorizes the state to cooperate with the Animal and Plant Health Inspection Service and other federal agencies in the destruction of predatory animals, destructive birds, and injurious field ro-

Under this section, the Commissioner of Agriculture may cooperate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture in the control and destruction of coyotes, wolves, bobcats, and foxes in this state that are injurious to livestock, poultry, and big and small game; injurious field rodents in rural areas; and certain nongame species of birds causing crop damage or substantial economic loss.

North Dakota Century Code Chapter 4-16 deals with the eradication of gophers, rabbits, and crows. Under this chapter, a board of county commissioners may levy and assess a tax of up to one-half of one mill for the abatement and extermination of gophers, rabbits, and crows. Bounties may be paid for pests if 20 percent of the qualified electors of a county file a petition with the board of county commissioners asking that a bounty be offered for the destruction of gophers, rabbits, or crows. If the board of county commissioners does not offer a bounty, then the township supervisors of any township within the county, upon the petition of 10 resident landowners in the township, may appoint an exterminator to poison, kill, and exterminate gophers within that township. The person appointed by the township board of supervisors must then notify the owner on whose land gophers are found to poison, kill, or exterminate the gophers or the exterminator may enter the property, exterminate the pests, and charge up to a maximum of 6.25 cents per acre, with a minimum charge of \$1 for exterminating gophers. The amount of the charges are paid by the township out of its general fund and charged as taxes against each parcel of land on which the expenses were incurred. Also under NDCC Section 58-03-07, the electors of each township have the power at the annual township meeting to establish a fund for the eradication of gophers, prairie dogs, crows, and magpies.

Pursuant to NDCC Section 11-11-57, counties may perform predatory animal, destructive bird, and injurious rodent control and enter into cooperative agreements with the Commissioner of Agriculture and the United States Fish and Wildlife Service for this purpose. In performing this pest management function, the board of county commissioners may make necessary expenditures from county special funds available for this purpose or from the county general or contingent funds.

North Dakota Century Code Chapter 63-01.1 deals with noxious weed control. A noxious weed is any plant propagated by either seed or vegetative parts that is determined by the Commissioner of Agriculture after consulting with the state's Cooperative Extension Service, or a county weed board after consulting with the county extension agent, to be injurious to public health, crops, livestock, land, or other property. The Commissioner of Agriculture is designated the state's weed control authority, but may cooperate with county weed boards and other state and local officials in controlling noxious weeds. The chapter also establishes county weed boards. The county weed board of each county is the noxious weed control authority for that county. One of the duties of the county weed board is to appoint or designate a county weed control officer who is responsible for the control of noxious weeds within the boundaries of the county weed district.

In 1981 the Legislative Assembly enacted a leafy spurge control program as part of a comprehensive revision of the weed law. This revision was recommended by the Legislative Council's 1979-80 interim Agriculture Committee. The board of county commissioners may levy a tax of up to one mill to fund a leafy spurge control program. The leafy spurge control program is cooperatively funded by landowners, county weed boards, cities, and the state. Landowners contribute 20 percent of the cost of the leafy spurge treatment program on their land. However, the cost to a landowner may not exceed \$60 per acre over a two-year period.

#### **1991 Senate Bill No. 2224**

Senate Bill No. 2224 (1991) would have allowed integrated pest management districts to be created upon the petition of 60 percent of the landowners of agricultural acres in a proposed district. The board of directors of the district would have had to estimate annually the expenses for implementing pest management programs in the pest management district. The county auditor would have been required to levy a tax of up to five mills or, upon resolution adopted by the board of directors after receipt of a petition by not less than 20 percent of the electors owning agricultural acres within the district, up to 10 mills, for covering the costs of the district's programs.

#### **Pest Management in Other States**

##### **South Dakota**

The control and management of pests in South Dakota is similar to that in North Dakota. A number of statutes covering separate pests have been enacted over time. However, one significant difference is that South Dakota county weed and pest boards have jurisdiction over both weeds and pests.

##### **Minnesota**

Minnesota authorizes the governing body of any county, city, or town to appropriate money for the control of insect pests, plant diseases, bee diseases, or destructive or nuisance animals if the Commissioner of Agriculture recommends that the governing body do so in order to control these pests.

##### **Wyoming**

In 1973 Wyoming enacted a weed and pest control act to control designated weeds and pests. The boundaries of weed and pest control districts correspond to county boundaries. The directors of the weed and pest control districts are appointed by the county commissioners and are authorized to implement and pursue an effective program for the control of designated weeds and pests; employ certified supervisors; make at least one annual inspection to determine the progress of weed and pest activities within a district; and render technical assistance to any city or town with a population of 5,000 or more. The board of county commissioners is required to levy a tax upon all property in the weed and pest control district not to exceed one mill on each dollar of assessed valuation for purposes of funding the weed and pest control program.

Wyoming has also established predatory animal districts that correspond with county boundaries. Predatory animal district boards have broad powers

for the eradication and extermination of predatory animals that prey upon and destroy livestock, pigs, poultry, and other domestic animals and wild game. The operations of the predatory animal district are funded by an annual levy of general taxes by the board of county commissioners of the county in which the district is located. The board of county commissioners is authorized to levy a special tax not to exceed 20 mills on the dollar on sheep assessments and not to exceed two mills on the dollar on cattle assessments, according to the assessed valuation of each as fixed by the State Board of Equalization. If these levies are insufficient to fund predatory animal control projects, there is a procedure whereby up to 30 mills on the dollar on sheep assessments and three mills on the dollar on cattle assessments may be levied.

Wyoming has also recently enacted a leafy spurge control program. Landowners contribute 20 percent of the cost of the program while weed and pest districts contribute the remaining 80 percent of the cost within the limitation of available district funds. To fund the leafy spurge control program, weed and pest districts are authorized to levy up to an additional one mill on the assessed value of taxable property within the district.

#### **Testimony and Committee Considerations**

The committee received information that the rationale for integrated pest management is to reduce the use of insecticides, pesticides, and herbicides, and to increase pest control by utilizing diseases, predators, sterile insects, resistant plant varieties, habitat management, repellents and, only as a final resort and to the least extent necessary, pesticides.

The committee received testimony from representatives of the Agricultural Experiment Station, North Dakota State University, that leafy spurge is spreading throughout North America and it does not appear there are any areas of North America where leafy spurge will not grow. Also, the committee received testimony that knapweed is becoming a serious problem on the Upper Great Plains and has surpassed leafy spurge as a problem in Montana.

The committee received information from representatives of the North Dakota Farm Bureau that the authority of county weed boards should be expanded to encompass the management of pests as well as weeds.

#### **Recommendation**

The committee recommends House Bill No. 1054 to allow county weed boards to control pests as well as weeds. Under the bill, a board of county commissioners may, or upon petition by 20 percent of the number of qualified electors residing in the county who voted for governor at the last general election shall, authorize the county weed board to control pests. The authority of county weed boards that have been authorized to control pests would be similar to their authority to control weeds under present law.

#### **FEDERAL FARM PROGRAMS TESTIMONY**

The committee requested authority from the Legislative Council to study federal farm programs. The Legislative Council authorized the committee to receive testimony on federal farm programs, but pro-

vided that the committee could hold no more than two hearings on farm programs and their impact on North Dakota farmers, that the hearings must be held with other meetings of the committee, and that the hearings must be conducted with minimal federal participation.

The committee received information from representatives of the Department of Economic Development and Finance and the Bank of North Dakota. The Department of Economic Development and Finance is working to develop the agricultural and energy sectors of the economy in North Dakota, as these are the two bases of the state's economy. The department is concentrating on agricultural technology and food processing, with a goal that 30 percent of agricultural products produced in North Dakota be processed in the state. The Bank of North Dakota provides ag-bank participation loans, beginning farmer loans, beginning farmer revolving loan fund loans, conservation reserve program loans, established farmer loans, family farm loans, farm operating loans, and Ag PACE fund loans.

The committee received information from representatives of the North Dakota Bankers Association, Independent Community Banks of North Dakota, Farmers Home Administration, and Farm Credit Services concerning the agricultural sector of the economy.

The committee received information from representatives of the North Dakota Farm Bureau, North Dakota Farmers Union, North Dakota National Farmers Organization, the Dakota Resource Council, and the North Dakota Grain Growers Association concerning the concerns of their memberships and their view of problems in the agricultural sector of the economy.

The committee received information from representatives of the Agricultural Stabilization and Conservation Service and the Soil Conservation Service concerning federal environmental requirements imposed on farmers.

The committee received information from representatives of the Agricultural Mediation Service and the Commissioner of Agriculture concerning the current problems farmers are experiencing with servicing their debt in North Dakota and programs available through the Department of Agriculture.

The committee received information from the State Tax Commissioner concerning the tax implications of transferring farm property, particularly land, to a creditor in exchange for a release of a debt against the property.

The committee received information from representatives of the North Dakota Agricultural Statistics Service and the Department of Agricultural Economics at North Dakota State University. The North Dakota Agricultural Statistics Service estimated there are approximately 33,000 farms in North Dakota. The Agricultural Stabilization and Conservation Service estimates there are approximately 58,000 farm units and approximately 33,000 farms in North Dakota. Farm units are based on farm program participation, while the number of farms is based on the use of Social Security numbers.

Representatives of the North Dakota Grain Dealers Association, Public Service Commission, local

elevators, and the Agricultural Commodities Business Unit of the Burlington Northern Railroad testified concerning the availability of hopper cars for grain shipment.

### **Conclusion**

The committee makes no recommendation concerning the testimony on federal farm programs.

### **LAND RECLAMATION RESEARCH CENTER REPORTS**

House Bill No. 1005 (1991) appropriated \$1,434,689 to the Land Reclamation Research Center. The center is a branch station of the Agricultural Experiment Station of North Dakota State University. The center's laboratories and offices are located in Mandan at the Northern Great Plains Research Center, Agricultural Research Service, United States Department of Agriculture. Of the amount appropriated to the center, \$759,613 is a transfer from the lignite research fund. The funds appropriated to the center are to be used for determination of the effect of postmine topography and soils on soil moisture levels and yield on reclaimed prime farmland and determination of the relation of soil properties and topography to the characteristics of vegetation on reclaimed rangeland; determination of the minimum vegetation ground cover necessary for erosion control on reclaimed land; evaluation of the predictability of regraded soil quality based on overburden quality; determination of the effect of reclamation techniques on soil compaction and soil productivity; and development of criteria for evaluating reclamation success for bond release based on vegetative reestablishment of soil parameters.

The Land Reclamation Research Center must file an annual report with the Legislative Council, the Public Service Commission, and the Industrial Commission on June 30, 1991, June 30, 1992, and thereafter as specified by the commission. Annual reports have been required by law since August 1, 1983. Each annual report is to contain a description and analysis of the conclusions reached from each reclamation research project that has been conducted the preceding year, as well as brief descriptions and analyses of tentative conclusions reached from all ongoing projects. Each report is to include recommendations for reducing unnecessary and duplicative regulatory costs. In order for a new reclamation research project to be approved for funding, the project must pertain to the development of data and conclusions that will assist in returning the land to its original or better productivity, assist in returning the land to an approved postmining land use as soon as possible, and assist in effectively reclaiming the land to its original or better productivity, while reducing unnecessary regulatory costs.

The center recommends continued research on the effect of postmine topography and soils on soil moisture levels and yield on reclaimed prime farmland to be used to support the request for combining prime and nonprime topsoil materials, that beta or mosaic diversity be considered in quantifying reclamation success for diversity, and that saturation percentage should not be required for use in determining topsoil and subsoil requirements.

### **Conclusion**

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



# REGULATORY REFORM REVIEW COMMISSION

The Regulatory Reform Review Commission is established by North Dakota Century Code (NDCC) Section 49-21-22. The commission is directed by statute to review the operation and effect of NDCC Sections 49-02-01(2), 49-21-01, 49-21-01.1(6), 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-02.1, 49-21-02.2, 49-21-04 through 49-21-07, 49-21-09, and 49-21-11, the Telecommunications Regulatory Reform Act, on an ongoing basis during the 1989-90, 1991-92, and 1993-94 legislative interims. The commission is required to submit reports regarding its operation and effect to the Legislative Council in the interims between sessions in 1990, 1992, and 1994.

Membership of the commission, established by Section 49-21-22, consists of the members of the Public Service Commission, two members of the Senate appointed by the President of the Senate, and two members of the House of Representatives appointed by the Speaker of the House of Representatives. Commission members during the 1991-92 interim were Senators David E. Nething (Chairman) and Rolland W. Redlin; Representatives Rod Larson and John Hokana; and Public Service Commissioners Bruce Hagen, Leo M. Reinbold, and Dale V. Sandstrom.

The commission submitted its first report to the Legislative Council in November 1990. The Council accepted the report for submission to the 52nd Legislative Assembly.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## 1989 SENATE BILL NO. 2320

Senate Bill No. 2320, enacted by the 1989 Legislative Assembly, exempts telecommunications companies and services from rate or rate of return regulation by the Public Service Commission unless the telecommunications company notifies the commission that it wants to be regulated in this manner. For telecommunications companies with over 50,000 end users, the election not to be exempt from rate and rate of return regulations is a one-time, irrevocable decision. Although the Legislative Assembly has exempted both nonessential telecommunications service, i.e., service that is not included within the definition of essential telecommunications service, and essential telecommunications service from rate or rate of return regulation by the commission, essential telecommunications service is still subject to a price cap based upon the essential telecommunications price factor. The essential telecommunications price factor is the annual change in a company's input cost index reduced by 50 percent of the company's productivity incentive adjustment. The input cost index is a comparison of the cost of all goods and services purchased by a company with the cost of the same goods and services in a base year. The productivity incentive adjustment is total output of services and products divided by the total inputs to produce those services and products.

Essential telecommunications service is service

that is necessary for access to interexchange telecommunications companies and two-way switched communications for both residential and business service within a local exchange area. A charge based on usage may not be required for residential and business local exchange service. Essential telecommunications services include access; any new product or service not existing on July 1, 1989, but deemed essential by the Public Service Commission after notice and hearing in accordance with NDCC Chapter 28-32; billing and collection of the billing company's own essential telecommunications services; directory listing and local exchange directory assistance; emergency 911 services and operator assistance in local exchange areas in which emergency 911 service is not available; except as provided in NDCC Section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas; service connection to the local exchange network; telecommunications service provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's telecommunications services; and transmission service between the end users premises and the local exchange central office switch including signaling service such as touchtone used by end users for essential telecommunications services.

## 1991 LEGISLATIVE SESSION

During the 1991 legislative session, NDCC Section 49-21-22 was amended to the extent that responsibilities for providing staff services was transferred from the Legislative Council to the Public Service Commission. No changes were made to substantive provisions of Senate Bill No. 2320.

## ANNUAL ESSENTIAL TELECOMMUNICATIONS PRICE FACTORS

The first essential telecommunications price factor was set by the Public Service Commission, as a 1990 price cap, at 1.02005.

The 1991 price cap was set by the Public Service Commission at 1.01405 for Group I companies and 1.02124 for Group II companies.

The Public Service Commission set a 1992 price factor (using 1991 productivity incentive adjustment and August 1991 GNPPI information for the input cost index) at 1.01665 for Group I companies and 1.02384 for Group II companies.

The Public Service Commission set a 1993 price factor (using 1992 productivity incentive adjustment and August 1992 GNPPI information for the input cost index) at 1.00488 for Group I companies and 1.01207 for Group II companies.

## OTHER IMPLEMENTATION DECISIONS

During this interim the Public Service Commission also decided Case No. PU-2320-90-737 requiring monitoring of U S West and Minot Telephone Company, and PU-2320-90-183. In the 183 case, the commission ordered equal access (intraLATA), and the beginning of unbundling for the purpose of offer-

ing service on an equal and open nondiscriminatory basis.

### 1991-93 MEETINGS

The first meeting of the 1991-93 Regulatory Reform Review Commission was held on October 2, 1991, in the Public Service Commission Hearing Room. Senator David Nething was elected chairman for the 1991-92 interim.

The following presentations were made:

- Minot Telephone Company: "Two Year Perspective on the Strengths and Weaknesses of Senate Bill 2320."
- U S West Communications, Inc.: "U S WEST Perspective."
- AT&T Communications: "SB2320, Is It Working."
- The chairman of the Economics Department, University of North Dakota, discussed the current direction of telecommunications regulation.
- The commerce counsel with the Public Service Commission, presented an update on Senate Bill No. 2320 developments since the last meeting of the Regulatory Reform Review Commission.

The next meeting of the Regulatory Reform Review Commission was held on April 21, 1992, in the Brynhild Haugland Room, State Capitol, with all commission members in attendance.

Discussion was held regarding proposed bill drafts for the next legislative session. A deadline of June 15, 1992, was set for filing of bill drafts, so that each interested party could review the filings and prepare positions for the next meeting.

The next meeting of the commission was held on July 16, 1992, in the Pioneer Room, State Capitol. Discussion was held on the Public Service Commission's equal access and open access decision, along with nine proposed bill drafts submitted by various parties. Comments on the proposals were made by most parties. The parties were very far apart on whether changes should be made to North Dakota telecommunications law and what those changes should be.

Therefore, the chairman asked the attorneys for interested parties to serve as the Lawyers' Advisory Committee chaired by Jan Sebby of Minot, North Dakota, for the Independent Telephone Company Group. This committee was directed to meet to resolve differences among proposed amendments to Senate Bill No. 2320, or other telecommunications statutes, with the objective of reaching a single proposal in bill format.

The third meeting of the Regulatory Reform Review Commission was held September 23, 1992, at the State Capitol. The Lawyers' Advisory Committee presented its report. Interested parties were given the opportunity to respond. There was no agreement on a total bill package, although there was full agreement on a few section changes and some industry agreement on some others. Most objection to proposed changes was from the Public Service Commission, but industry was not completely united on all issues either.

The Lawyers' Advisory Committee was asked to

continue to meet to resolve or narrow differences and file its second recommendation on proposed legislation by October 23, 1992, so that parties could review the document and prepare for the November 5, 1992, meeting. Also, for the November 5 meeting, Public Service Commission staff was asked to prepare a draft report for the Regulatory Reform Review Commission to submit to the Legislative Council.

The fourth meeting of the Regulatory Reform Review Commission was held in Minot, North Dakota, on November 5, 1992. Jan Sebby presented a report on the Lawyers' Advisory Committee, including a summary of issues and positions, and comments were received from interested parties. The Public Service Commission presented its comments on the proposals of the Lawyers' Advisory Committee and submitted one bill draft, to delete reference to the 50 percent factor in the productivity incentive adjustment.

### RECOMMENDATIONS

The Regulatory Reform Review Commission recommends changes to North Dakota's telecommunications law on two issues: (1) banking of essential telecommunications price factor changes (NDCC Section 49-21-01.3), and (2) uniform long-distance rates (NDCC Section 49-21-07). These are changes on which industry and the Public Service Commission agree. There will also be several "housekeeping" statutory changes incorporated into this bill draft on which all agree, as well.

### PUBLIC SERVICE COMMISSION STAFF'S REPORT ON THE OPERATION AND EFFECT OF SENATE BILL NO. 2320 Goals of Regulation

According to North Dakota Century Code Section 49-21-02, the goals of telecommunications regulation are:

1. To make available to all people of this state modern and efficient telecommunications services at the most economic and reasonable cost.
2. To allow the development of competitive markets for telecommunications services where such competition does not unreasonably distract from the efficient provision of telecommunications services to the public, and to lessen regulation in whole or in part of those telecommunications services which become subject to effective competition.
3. To establish and maintain reasonable charges for telecommunications services without unreasonable discrimination, or unfair or destructive competitive practices.
4. To ensure that regulated charges do not include the costs of unregulated activities.
5. To encourage the establishment and maintenance of a strong telecommunications industry.

### Promises Made to the Legislature

As with most proposed legislation, promises were made by the proponents of Senate Bill No. 2320. While the promises were quite extensive, this status report reduces the promises to a few broad categories and discusses the successes and failures of each.

### **Efficiency Gains**

The proponents of Senate Bill No. 2320 claimed that it would encourage a company to reduce its costs and therefore its prices to consumers.

In theory, setting a price limit and limiting the authority of the regulator with respect to profit limitations should encourage a company to reduce its costs. For example, assume the average cost of providing local service is \$10 per access line. If a company reduces its cost to \$9 per access line, the company makes more money because the price it charges for local service is more or less fixed under the 1989 law. As you know, the current prices for telephone service are fixed by law except for an inflation index, governmentally imposed changes in taxes, or accounting practices and if a company is so inclined—price decreases to meet competitive pressures.

Since 1989, U S West's revenues have increased by about one percent per year; expenses have been constant; investments in North Dakota are up; and profits on shareholder equity have increased from 12.11 percent to 13.13 percent.

If efficiency gains can be measured by changes in the overall profitability of a company, the law is working with respect to U S West's earnings in North Dakota. If it is measured by a company's ability to reduce its costs of service during a time when inflation has been minimal, there has been little change in U S West's costs to provide service. If it is measured by the lower prices U S West charges its customers, this has not occurred yet.

### **Modern Telecommunications Network and New Services**

U S West took the position it would upgrade its telephone system so North Dakota could enjoy a modern telecommunications network along with the new services a modern network provides. The promise was made that U S West would provide digital transmission capability out of every North Dakota central office.

First, it is important to note that the promise to provide digital transmission capability out of every North Dakota central office does not mean all of U S West's customers will enjoy state of the art digital switching. Instead, it means some customers will have digital and others will have electronic analog. Electronic analog offices are computer controlled but they do not offer the superior transmission quality and efficiencies provided by digital.

Currently, 41 percent of U S West's customers enjoy state of the art digital switching. Of the remaining 27 companies serving customers in North Dakota, 97 percent of their customers enjoy state of the art digital switching.

According to U S West's 1983 depreciation study, the company had intended to upgrade all its central office technologies to digital or electronic analog before the end of 1990. Today, the plan is to have these technologies in place by 1995.

Before Senate Bill No. 2320, a total of approximately 112,000 lines in North Dakota were served by digital switches. Today, or about 3.5 years later, approximately 179,000 lines in service are served by digital switches, or an increase of about 60 percent.

New services provided by U S West in 1991 in-

cluded measured local service, custom calling features, and interLATA equal access to 17 communities. There were a number of other new services introduced in 1991 but were primarily aimed at its business customers.

To what extent modernization would have occurred absent the passage of Senate Bill No. 2320 is not clear. However, it is clear that modernization was being planned and was occurring long before Senate Bill No. 2320.

### **Less Expensive and Time-Consuming Regulatory Process**

When the 1989 legislation was passed, everyone hoped the predictions of a less expensive and time-consuming regulatory process would come to fruition.

The commission's fiscal note on Senate Bill No. 2320 estimated it would take the commission 10 days of hearings at a cost of approximately \$23,000 to implement the new legislation. Since that estimation, we have spent more than 10 days on one single hearing and have probably spent more than \$23,000 on paper supplies alone.

Consulting fees incurred by the various parties to participate in the hearings to implement Senate Bill No. 2320 have exceeded one-half million dollars, with U S West being the big spender and the commission running a close second. This figure does not include travel, salaries and fringe benefits of full-time employees, or other related costs.

With respect to the impact it has had on the workload of the commission, Senate Bill No. 2320 has so increased the workload of the Public Utilities Division that we are asking the 1993 legislature for one additional full-time employee.

For a bill that was supposed to reduce time and money spent on the regulatory process, it has had the opposite effect for all concerned.

### **Quality of Service Will Improve**

The prediction that quality of service would improve might be gauged by the changes in number of complaints received by the commission, changes in responses of customers to customer surveys, or perhaps changes in the measurements of technical quality standards.

The number of complaints recorded by the commission regarding services provided by U S West increased 73 percent in 1991 compared to 1989. While this may give us cause to be concerned, you should note that U S West serves approximately 195,000 customers in North Dakota and that the total number of complaints recorded by the commission in 1991 numbered 289. While the percentage increase in complaints is significant, the number of complaints per year per customer served is only one in 675.

Regarding customer surveys and technical quality standards, U S West currently enjoys better than a 90 percent satisfaction rating. Because this is a new reporting requirement of the commission, information dating back to the beginning of Senate Bill No. 2320 is not available and therefore the change in quality of service cannot be determined until we have some additional experience.

Based on the very limited information available, there does not appear to be any significant change in

the quality of telephone service under Senate Bill No. 2320. The quality of telephone service was good before Senate Bill No. 2320 and it is still good today.

### **More U S West Jobs in North Dakota**

The employees of U S West were called upon by their management to support Senate Bill No. 2320 and in return U S West would use any regulatory reform to grow its North Dakota business to create additional job opportunities in North Dakota.

Since 1989, U S West's employee levels have been reduced by 31 according to the company's 1991 annual report to the commission. In addition, according to an Associated Press article published in the Jamestown Sun, U S West has announced it will close its small business office in Fargo on September 18, 1992, eliminating 14 North Dakota jobs.

Again, to what extent employee levels would have changed in the absence of Senate Bill No. 2320 is not clear. It is clear that U S West is employing fewer employees in North Dakota than it did when Senate Bill No. 2320 became law in 1989.

### **Economic Development**

U S West said that Senate Bill No. 2320 would bring economic development to the state of North Dakota. To determine whether this expectation has been fulfilled is difficult at best.

Everyone can agree that a strong telecommunications infrastructure in North Dakota should help provide an environment conducive to economic development. An example of this would be the success story of Rosenbluth Travel in Linton.

Outside the telecommunications arena, North Dakota has a rather small electric company operating under traditional rate of return regulation which has created over 400 full-time jobs in its North Dakota service territory since 1988. This is mentioned to point out that economic development can and is being achieved in North Dakota, with or without regulatory reform. To what degree this is accomplished by others in the utility industry will depend on the level of cooperation and resources each dedicates to the task of creating jobs in North Dakota.

### **Major Events Since the Implementation of Senate Bill No. 2320**

#### **Telephone Companies Were Sold**

Since Senate Bill No. 2320 was signed into law, Northern States Power Company was able to sell Minot Telephone Company for approximately three times its book value and Inter-Community Telephone was able to sell its operations for approximately 1.7 times its book value. To put this in perspective and show the significance of these transactions, please note that the sales price of these combined properties exceeded \$50 million.

While selling companies for two or three times book value is good for those selling, it is not necessarily good for the captive customers paying the telephone rates. Inflated capital investments in North Dakota telephone properties will result in consumers paying inflated prices for telephone service.

### **1 + Equal Access Ordered**

Recently, the commission ordered all telephone companies to begin developing and providing equal access. The order will encourage competition in the intraLATA long-distance service market (or the market primarily served by U S West) because the customers of long-distance companies, other than U S West, will no longer have to dial access codes before dialing the intended long-distance number. The order is in harmony with the statement made to the legislature that competition is good for everyone.

It was said during the 1989 legislative session that competition is good for customers because it drives prices down, encourages companies to do right by the customer, and it keeps companies on their toes. Comparisons of how AT&T's long-distance rates have fallen since competitors entered that market were used to convince legislators that Senate Bill No. 2320 was good for North Dakota.

Currently, it costs more to make a three-minute day time phone call to Hebron, North Dakota, than it does to call Hawaii, Alaska, or some other corner of the United States. Equal access will bring about competition resulting in lower prices to North Dakota consumers.

The commission's equal access order has been appealed to the District Court. In its appeal, U S West claims the commission lacks jurisdiction by asserting that the commission does not have the authority to require a local exchange company to invest in the facilities and technology to implement a service not needed to provide essential telecommunications services in North Dakota.

With respect to what other states are doing, according to the National Association of Regulatory Utility Commissioners' recently published survey, there are seven states which do not allow intraLATA competition, 17 states have addressed and denied intraLATA presubscription or have denied the right of customers to choose their provider of intraLATA toll service, two states provide for intraLATA presubscription, 10 states have proceedings pending in which intraLATA presubscription is an issue, 10 states currently allow intraLATA competition but have not addressed the issue of intraLATA presubscription, and three states have approved plans by independent local exchange companies to provide centralized equal access, as summarized below.

#### **States Which Do Not Allow IntraLATA Competition**

|            |            |
|------------|------------|
| Arizona    | Arkansas   |
| California | Kansas     |
| Nevada     | New Jersey |
| Virginia   |            |

#### **States Which Have Denied IntraLATA Presubscription**

|               |               |
|---------------|---------------|
| Alabama       | Colorado      |
| Delaware      | Florida       |
| Georgia       | Indiana       |
| Louisiana     | Michigan      |
| Missouri      | New Hampshire |
| Oregon        | Pennsylvania  |
| South Dakota  | Tennessee     |
| Utah          | Vermont       |
| West Virginia |               |

**States Which Require IntraLATA  
Presubscription**

North Dakota  
Alaska (Alaska does not have LATAs like North Dakota but requires presubscription for its one LATA)

**States With Pending Proceedings in Which  
IntraLATA Presubscription is an Issue**

|                |           |
|----------------|-----------|
| California     | Minnesota |
| Montana        | New York  |
| North Carolina | Ohio      |
| Oklahoma       | Vermont   |
| Virginia       | Wisconsin |

**States Which Allow IntraLATA Competition  
But Have Not Addressed the Issue of  
Presubscription**

|             |               |
|-------------|---------------|
| Connecticut | Idaho         |
| Illinois    | Maine         |
| Maryland    | Massachusetts |
| Nebraska    | Texas         |
| Washington  | Wyoming       |

**States With Approved Plans for Centralized  
Equal Access**

|              |           |
|--------------|-----------|
| Iowa         | Minnesota |
| South Dakota |           |

In summary, competition for intraLATA toll is on the doorstep waiting to get in. The commission's progressive equal access order is in accord with the aggressive regulatory reform brought about by Senate Bill No. 2320. Barring legislative intervention or an unfavorable court ruling, the consumers of intraLATA toll service stand to gain the benefits of competition.

**Inside Wire Amortization Was Completed**

Since the inauguration of Senate Bill No. 2320, U S West has finished writing off the money it had invested in inside wire. However, U S West has not adjusted rates to reflect the windfall of approximately \$3 million per year now accruing in the absence of the amortization expense.

Inside wire is the telephone wire inside the home or office building. Ownership and therefore the responsibility of maintaining those inside wires has been turned over to the owners of the homes and office

buildings. Originally, U S West owned these wires. To provide for the recovery of its investment, U S West was allowed to write off its investment over a 10-year period and include those costs as an expense for ratemaking purposes.

At the conclusion of the writeoff, the commission filed a show cause hearing to find out why U S West did not reflect this accounting change by reducing rates for essential services. The commission's order to show cause estimates the impact would reduce local service by \$1.10 per month, if applied exclusively to local service rates.

U S West's primary argument is that the commission lacks jurisdiction.

**Summary**

The regulatory reform law passed in 1989 has turned what seems to be relatively simple matters of fairness and justness into a barrage of endless meetings, workshops, hearings, and legal battles.

As each issue comes before the Public Service Commission we no longer find ourselves asking, "What is fair and just to both the utility company and its consumers?" Instead, our question has become, "Does the law permit us to require what is fair and just?"

The basic argument the Public Service Commission faces each time it tries to require what it believes to be fair and just is its lack of authority under Senate Bill No. 2320. The primary arguments advanced before the Public Service Commission and the courts dwell more on the commission's lack of authority rather than the validity of its action.

Accordingly, the people of North Dakota should not think that the Public Service Commission is effectively regulating the telephone industry when at every turn it is faced with the threat that it does not have the necessary authority to require something it deems fair and just. The general public should not be given the perception that the Public Service Commission is effectively regulating an industry when for practical purposes, it cannot.

Please keep in mind the significance of telephone regulations. The local exchange companies serving North Dakota take in about \$175 million in annual revenue. Legislation which permits the taking of just one percent more revenue than is reasonable has a significant impact on the state's economy.

# SPECIAL EDUCATION COMMITTEE

The Special Education Committee was assigned four studies. House Concurrent Resolution No. 3054 directed a study of the current and future role of the North Dakota early childhood tracking system. Senate Concurrent Resolution No. 4052 directed a study of the North Dakota family foster home fire and safety codes. House Concurrent Resolution No. 3039 directed a study of the entire area of special education, including the legal requirements for the provision of special education services, the delivery of medical services to students with disabilities in a school environment, alternatives for the provision of various services, cost factors, and directions for the future. Senate Concurrent Resolution No. 4034 directed a study of the state's financial support for mandated special education programs and the method by which the Department of Public Instruction distributes funds under the state grant program.

Committee members were Representatives Kathi Gilmore (Chairman), James Boehm, Jim Brokaw, James O. Coats, William E. Gorder, Richard Kunkel, Rosemarie Myrdal, Bill Oban, Kit Scherber, and Dennis J. Schimke, and Senators Barb Evanson, Dale Marks, and Curtis Peterson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## EARLY CHILDHOOD TRACKING SYSTEM STUDY

### Background

The North Dakota early childhood tracking system is a joint project of the Department of Health and Consolidated Laboratories, the Department of Human Services, and the Superintendent of Public Instruction. It was designed to monitor or "track" the development of young children, from birth through age 5, who are "at risk" for developmental delays. Children may be "at risk" because of medical or biological factors, e.g., low birth weights or congestive heart failures, developmental factors such as failure to thrive, low scoring on developmental screening tests, or environmental factors, e.g., familial history of child neglect. The children in need of the most attention are those with risk factors from several categories or multiple risk factors from the same category.

The children are tracked by local interagency teams either on a single county or a multicounty basis. The teams consist of representatives from agencies that provide services to young children and their families. Often, this includes representatives of women, infants, and children supplemental nutrition program; early periodic screening, diagnosis and treatment; Headstart; local hospitals and clinics; special education units; infant development programs; community health units; Bureau of Indian Affairs; tribal agencies; and others, depending on the location. The teams typically meet on a monthly basis to review referrals, share tracking information, and make decisions about specific actions to be taken.

Referrals generally take place when an agency

comes in contact with a child exhibiting one or more risk factors. With parental consent, information is gathered about the child and then shared with other members of the tracking team to determine appropriate service delivery.

### Federal Legislation

In 1986 Congress amended the Education for all Handicapped Children Act and authorized the Secretary of Education to provide formula grants to states for the planning and implementation of early intervention services directed toward infants and toddlers with disabilities and their families. Funds were provided for a five-year planning period in which participating states could develop and implement early childhood intervention services.

The primary responsibility for planning and implementation is located in a single state agency designated by the Governor. The agency is advised and assisted by an interagency coordinating council. Twenty-seven states have implemented early childhood tracking systems and the remainder have systems in various developmental stages.

### The North Dakota Program

The North Dakota early childhood tracking system began as a pilot project in the Grand Forks area in 1986. Since that time, it has grown to include 462 tracking team members representing 328 agencies and providers. The Governor vested the primary responsibility for Part H planning and implementation in the Department of Human Services. The department works jointly with the Department of Health and Consolidated Laboratories and the Superintendent of Public Instruction to provide the necessary services and supports. Over 1,300 children are being tracked in the state. A fully operational system will be able to accommodate up to 5,000 children.

### Testimony

Testimony indicated that early intervention helps to prevent developmental delays from becoming problems that require extensive services. It was estimated that the cost of preventing a child from failing is in excess of \$300,000 and that every dollar spent on early intervention and prevention can save the state \$4.75 in the costs of remedial education, welfare, and crime in a child's later life. Testimony also indicated that the tracking system resulted in much improved interagency relationships and consequently greater coordination of services among participating agencies.

From the perspective of the families and children receiving services, the tracking system functions in a brokering role thereby allowing access to a wide range of direct and indirect services that better meet the needs of the families and children. It provides service coordination and followup contact with families. Finally, it provides useful information about child development and growth, with a view to encouraging better parenting, and it maintains the child in a single monitoring system that makes the coordination of

service provision easier, as well as service continuation more likely when the family moves from one area to another.

The committee found that the North Dakota early childhood tracking system was at a point of maturation which justified additional inquiries. Among these inquiries is the method by which agency roles and responsibilities could be balanced or defined to provide the most effective growth and operation of the system. One method the committee considered involved the creation of a birth registry, patterned after the current hearing risk registry maintained by the Department of Health and Consolidated Laboratories. The committee was informed that this would allow a better system for the identification of children needing the services of the tracking system.

Another point of inquiry involves cooperation with the state's American Indian population. The committee was informed that the tracking system has demonstrated marked success on the reservations, but because of the unique challenges presented by the interplay among federal, state, and tribal interests, the tracking system must be assessed and evaluated to ensure cultural sensitivity, increased outreach, and maximum benefit to the American Indian population.

A final point of inquiry involved the continued financial support of the tracking system. The tracking system is supported by federal funding but this funding may be reduced, or increased state participation may be determined to be merited.

### **Committee Considerations**

The committee considered a resolution draft that encouraged state agencies to work together and maximize available resources to assist young at-risk children and their families. The committee determined that the North Dakota early childhood tracking system provided a useful role in the provision of services to children and their families and that the benefits would increase with the continued cooperation of state agencies in efforts such as the implementation of a birth registry.

The committee also considered a resolution draft directing the Legislative Council to again study the tracking system. Because testimony indicated that the tracking system is serving a useful purpose, that the system is expanding, and that the continuation of federal funding to meet the needs of the children and families participating in the tracking system is subject to budgetary vagaries, the committee determined there should be a vehicle by which the system's well-being and continued growth and expansion could be monitored.

### **Recommendations**

The committee recommends House Concurrent Resolution No. 3003 to urge state agencies to work together and maximize available resources in order to assist young at-risk children and their families.

The committee recommends House Concurrent Resolution No. 3004 to direct the Legislative Council to study the progress of the North Dakota early childhood tracking system, the need for further expansion of the program, and the continuation of funding through federal or other sources.

## **FAMILY FOSTER HOME FIRE AND SAFETY CODES STUDY**

### **Background**

Foster homes are required to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all children cared for in the homes. The Department of Human Services is authorized to adopt reasonable rules governing foster homes in order to carry out the purposes set forth in North Dakota Century Code (NDCC) Chapter 50-11.

As part of its licensing procedure, the Department of Human Services set forth in rule the minimum physical standards for foster homes. The standards govern telephones, sleeping rooms and basement bedrooms, closets, bathrooms, exterior and interior doors, lights, heat, ventilation, plumbing, and water and milk supplies. With respect to fire safety, the department requires a foster home to be equipped with approved fire extinguishers, smoke detectors, and smoke alarms.

The department also requires that all foster homes comply with local fire requirements and ordinances. The rules require a fire safety inspection by the local fire inspector or the State Fire Marshal at the time of licensing and every two years thereafter. Any noted deficiencies are to be immediately remedied.

There are approximately 600 licensed foster care homes in North Dakota. Each home had to undergo and pass a fire safety inspection prior to licensure. However, each home did not necessarily undergo an equally stringent fire inspection. When fire departments conduct inspections, they generally use one of several available life safety codes as the standard of measurement. This lack of a uniform standard, together with varying personal interpretations, has resulted in inconsistent interpretations. In addition, when current life safety codes are applied, buildings constructed in the 1950s or 1960s generally do not pass the inspections.

### **Testimony**

Testimony indicated that concerns about foster home fire inspections have been ongoing at least since 1985. On numerous occasions there have been meetings involving local fire chiefs, fire inspection personnel, social service agencies, the State Fire Marshal, representatives of the Attorney General, and representatives of the Department of Human Services. Those involved in the various meetings agreed that the issue of fire inspection was not a simple one and that no one involved supported the idea of licensing or placing children in unsafe homes. However, the various representatives were unable to reach a consensus on the method and the extent to which homes should be inspected.

Testimony indicated that fire officials throughout the state support the inspection of foster homes by trained fire inspectors, at least before the initial licensure. Thereafter, the homes could be monitored by the foster parents and by social workers. The State Fire Marshal has developed a training program for day care and foster care inspection and has made it available to local fire departments at fire prevention schools and seminars. Although the State Fire Marshal is willing to provide training and information to

the local fire departments, the requests for such assistance have been limited, in part because local groups wish to maintain only a minimum level of involvement with day care and foster home inspections.

From the perspective of firefighters, an inspection is a very small part of the fire prevention process. Although a fire inspector looks for features such as egress options, early detection devices, and extinguishers, an inspection cannot guarantee the safety of a foster child living in the home. The committee was informed that what was needed was fire prevention training for foster parents.

From the perspective of the Department of Human Services, licensing responsibilities are taken seriously and inspection functions such as those currently carried out by fire inspectors could not be conducted by the department's staff. For that reason, the department has consistently requested fire inspections before licensure. Each year many foster homes cannot be licensed because they fail the initial fire inspection and updating the home to pass the fire inspection is often deemed too costly.

### **Committee Considerations**

The committee considered two bill drafts. Both required each foster parent to complete a course of instruction related to fire prevention and safety prior to initial licensure and each license renewal. The course of instruction would be designed by the State Fire Marshal in cooperation with the Department of Human Services and would be offered by the Department of Human Services throughout the state.

Both bill drafts also required the Department of Human Services to prescribe self-declaration forms to be completed and signed by each foster parent before initial licensure and before each license renewal. The self-declaration forms would include references to smoke detectors, fire extinguishers, fire escape plans, inspections of appliances, electrical systems, and heating systems.

The final section of each bill draft differed. One bill draft provided that upon the request of a public or private entity supervising a foster home, the Department of Human Services could require that the foster home undergo, before or after licensure, a fire inspection, inspection of the heating system, the electrical system, and any other type of inspection deemed necessary. The other bill draft provided that the Department of Human Services could require a foster home to undergo a fire inspection, inspection of the heating system, the electrical system, and any other type of inspection that the department deemed necessary.

Foster parents expressed concern that the bill drafts would still permit the Department of Human Services to require fire inspections, in addition to the fire prevention training and the self-declaration forms. The committee determined that the department is granted authority over foster homes and it should have the ultimate responsibility for foster homes. Foster home licensure involves a series of checks and balances during which the department relies heavily on social workers. However, the department's position was that it did not wish to rely solely on social workers or other private entities to request fire in-

spections. The committee determined that department personnel needed the flexibility to request fire inspections when they deemed it appropriate.

A representative of the department stressed that it was not the department's intent to require a fire inspection of every home seeking licensure, but if a potential foster home reveals any causes for concern, the department would seek a fire inspection.

### **Recommendation**

The committee recommends Senate Bill No. 2048 to require each foster parent to undergo fire prevention training and to complete a self-declaration form before initial licensure and before each license renewal. The bill authorizes the Department of Human Services to require, on a case-by-case basis, before or after licensure, a fire inspection, inspection of the heating system, the electrical system, and any other type of inspection that the department deems necessary to carry out its purposes.

### **SPECIAL EDUCATION**

Because the financial aspects of special education are an integral part of the delivery process, the committee approached the directives of House Concurrent Resolution No. 3039 and Senate Concurrent Resolution No. 4034 within the parameters of a single study.

### **Background**

Over four decades ago, a group of persons interested in education recognized that a number of children in the educational system were unable to benefit from the existing educational services. These children were "exceptional children" and a committee was formed to determine the feasibility of establishing an aid program that could direct special attention to such children in order that they might overcome their special problems and become productive citizens of the state.

The efforts of this committee resulted in the recommendation and eventual passage of 1951 House Bill No. 540. Exceptional children were defined as "educable children under the age of twenty-one whose educational needs are not adequately provided for through the usual facilities and services of the public schools, school districts, or state institutions because of physical, mental, emotional, or social conditions . . ." Special education was defined as "the provision of facilities, instruction, supervision, and other necessary services not otherwise provided such children in the public schools and institutions."

The 1951 legislation created an Advisory Council on Special Education consisting of the Superintendent of Public Instruction, the State Health Officer, the director of the Division of Child Welfare of the Public Welfare Board, the director of the Division of Vocational Rehabilitation of the Board of Higher Education, the superintendent of the State School for the Deaf, the superintendent of the State School for the Blind, and the superintendent of the Grafton State School. The advisory council was given specific duties such as establishing a general state policy regarding special education and endeavoring to ensure a cooperative special education program characterized by the coordination of all available services



with which to assist exceptional children. The director of special education, who was employed by the Superintendent of Public Instruction, was in turn directed to "assist the school districts of the state in the inauguration, administration, and development of special education programs, establish standards and provide for the approval of certification of schools, teachers, facilities, and equipment."

Larger than ordinary per-pupil payments were required to be made to school districts offering special education programs. The 1951 report of the Legislative Research Committee stated that increased payments were deemed warranted because "education of this type requires individual and special attention, and it is not always possible to conduct it in classrooms where a large number of children can come together."

The appropriation for special education during the 1951-53 biennium was \$50,000. By the 1959-61 biennium the appropriation for special education had risen to \$365,000 and the number of children served had risen from 472 in 1951 to 3,055. Using national statistics, it was estimated that the number of children requiring special education services in North Dakota might be as high as 15,000, or 20 percent of all schoolchildren.

A 1959-60 interim study cited three main problems associated with the delivery of special education—lack of space for instruction, shortage of trained personnel, and inadequacy of available funds. It was the opinion of that interim committee that if a substantially increased special education program were to be provided, it would have to be financed primarily from funds by local governments and not the state. The committee also found that county level special education programs would be the most desirable from a financial perspective and would best utilize the available personnel and facilities. Since many school districts did not have a sufficient number of children in need of special education services to warrant programs within their districts, the committee suggested that a county board of special education should be given the authority to contract with school districts both within and outside the county for special education facilities.

In response to the recommendations made by the interim committee, the 1961 Legislative Assembly enacted legislation that authorized the establishment of county boards of special education, funded by the boards of county commissioners out of county general funds, or if approved by a majority of the county electorate, by a county special education levy not in excess of three mills.

For the next 12 years, the delivery of special education services in North Dakota remained structurally unchanged. However, in 1973 the Legislative Assembly required all school districts to submit a plan for implementing special education services to the Superintendent of Public Instruction by July 1, 1975.

This mandate spurred considerable growth in the provision of special education services to exceptional children. Some school districts extended their special education programs while many others, not having made prior arrangements for special education children living within their boundaries, took the first steps toward implementing special education pro-

grams. The amount of state funding assistance for special education was also increased in 1973, with the legislative objective being the expansion of special education programs in terms of both scope and availability.

The involvement of special education in North Dakota did not cease in the mid-1970s. It did, however, come under the umbrella of federal legislation.

### **Federal Law**

In 1975, Congress enacted legislation that has been the foundation for the provision of special education to children with disabilities in this country. In the Education for all Handicapped Children Act of 1975, Congress enumerated the following nine specific findings, which were reaffirmed by the 1991 amendment known as the Individuals with Disabilities Education Act:

1. There are more than eight million children with disabilities in the United States;
2. The special education needs of such children are not being fully met;
3. More than one-half the children with disabilities do not receive appropriate educational services that would enable them to have full equality of opportunity;
4. One million of the children with disabilities are excluded entirely from the public school system and will not go through the educational process with their peers;
5. There are many children with disabilities participating in regular school programs and failing to have successful educational experiences because their disabilities are undetected;
6. Because of the lack of adequate services within the public school system, families are often forced to find outside services, often at great distances from their residences and at their own expense;
7. Developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, state and local educational agencies can and will provide effective special education and related services to meet the needs of children with disabilities;
8. State and local educational agencies have a responsibility to provide an education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities; and
9. It is in the national interest that the federal government assist state and local efforts to provide programs that meet the educational needs of children with disabilities to assure equal protection of the law.

The Individuals With Disabilities Education Act requires an appropriate education for children with disabilities and emphasizes the need to provide special education and related services designed to accommodate the unique demands of children with disabilities. To achieve this goal, the Act provides federal funds to state and local educational agencies and regulates special education services for millions of children with disabilities.

## **Delivery of Special Education Services in North Dakota**

In the 1990-91 school year, 12,504 students with disabilities ranging in age from 0 to 21 received special education services in North Dakota. Of that total, 12,235 were served in the public school system and 269 received assistance through the state-operated programs, e.g., state schools and infant development programs.

With this number of children, school districts have been under strain to continue the level of special services needed by these children. Although the schools are making every effort to serve children in the least restrictive environment possible, they are finding that some special needs children—especially severely disabled children—require even more costly instructional services.

### **Medically Fragile Children**

One particular area to which the committee directed its attention was that of medically fragile students—students with specialized health care needs. Children in special education who are medically fragile or technology dependent constitute about 1.2 percent of the special education population. In North Dakota this figure is about 152 students. Traditionally, students with specialized health care needs that required intensive medical attention could not attend school except in isolated settings, e.g., institutions and hospitals. Many did not even survive long enough to require schooling. Medical advancements have resulted, however, in the ability to provide extensive interventions. As a result, students who previously could not attend school are now able to do so. This has raised a number of issues for the schools, most of which are not easily resolved. What is a medical service versus an educational service? What roles and responsibilities are involved in the provision of services? Must there be specialized training of school district personnel? Must there be licensure of school district personnel? What degree of interagency collaboration can be expected between those agencies dealing in the area of education and those dealing in the areas of health and social welfare? What are the liability issues that a school encounters in the provision of medical services? Finally, who pays for the provision of medical services in a school setting?

The committee found that the educational challenges created by special needs children are great. However, many special needs children can successfully participate in school learning experiences if given the appropriate medical service. While schools tend to question what degree of medical service is appropriate, they are given some direction by federal law. Schools are to provide those supportive services necessary to permit a child to participate in a free and appropriate public education. Exactly what this means in terms of specific obligations is less clear.

The committee received testimony that most schools have dealt with or will have to deal with these issues, because the only child who might be considered uneducable is a child with a degenerative brain disease. All other children could, at least to some extent, benefit from a classroom environment. While it was conceded that no easy answers exist and that there is no clear direction, it was stated that a delineation

could be made between what constitutes medical and what constitutes nonmedical services by taking the position that if a service can be performed by a lay person, on demand, with little judgment involved, it could be considered a nonmedical service and consequently, an educationally related expense. The committee found that the most important aspect regarding the delivery of services to medically fragile children was not well-defined legal parameters, but rather ongoing cooperation among the schools and the children's families. Many of the services are complex and in fact life-sustaining—suctioning, inhalation therapy, oxygenation, etc. They must be coordinated both inside and outside the school environment.

Schools have a variety of concerns about serving medically fragile children—obtaining trained or qualified personnel, obtaining adequate medical information, obtaining appropriate medical care especially in the rural areas of the state, making appropriate staffing pattern decisions, helping parents deal with the medical insurance issues, and integrating these special needs children into regular classrooms. From a sociological perspective, an often unmentioned aspect is the respite that is provided for families who must otherwise provide this care themselves.

Because the issues and the consequences of decisions are still in the initial stages, a 12-member task force was formed. The Task Force on Medically Fragile/Technology Dependent Children met for the first time on July 30, 1992. The task force is intended to identify the issues involved in serving medically fragile students, develop guidelines for the provision of services to children so identified, and develop recommendations for the training and supervision of personnel providing school health services to medically fragile or technology dependent children. The task force's work is expected to last eight to 12 months and any recommendations for policy changes will be provided to agencies and committees, such as the Children's Services Coordinating Council and the Child Health Task Force.

### **Gifted and Talented Students**

The committee also studied the needs of gifted and talented students. An exceptional child is one who may be handicapped or gifted. A gifted child is defined as one who by virtue of outstanding abilities is capable of high performance and who requires differentiated educational programs and services beyond those normally provided by the regular school program in order to realize his or her contribution to self and society. The provision of services to handicapped children is mandatory, while the provision of services to gifted children is permissive. Gifted and talented mandates currently exist in 26 states. Twenty-one of those states have mandates requiring gifted and talented programming from kindergarten through grade 12, and 23 of the states provide funding for their mandates.

There are 15 to 20 gifted and talented programs in the state. They are generally "pull-out" programs and cover only a portion of the grades because of limited resources.

Testimony from gifted and talented students and their parents indicated that gifted and talented students do not "do just fine on their own." These

students tend to get stuck in repetition, get bored, or become class clowns, troublemakers, and even drop-outs. The students tend to question everything and are often disruptive. The students tend to be highly sensitive and because intellectual maturity does not equal emotional maturity, often cannot solve their own problems.

Testimony indicated that gifted and talented students are exceptional students with special needs and should be included within the mandate for special education services.

Testimony from representatives of the Superintendent of Public Instruction indicated that services for gifted and talented students should be based on what those students need, and that there are new ways of looking at education for gifted and talented students. Among these is a tiered delivery system that takes into account the special skills and talents of all students. Level one encompasses service for all students and involves the enhancement of learning opportunities—creative thinking, critical thinking, and general exploratory type enrichments. Level two encompasses service for many students. It involves expansion beyond the basic exploratory stage. Level three encompasses service for some students. It involves extended or in-depth work to provide a higher challenge and a more appropriate pace for learners who show extended interests and abilities. Level four encompasses services for a few students with a focus based on individually designed responses to the unusual needs of these students.

Testimony indicated that the Superintendent of Public Instruction has not pursued mandated gifted and talented programs, in part because mandates have significant limitations. Instead, improved learning for all students is being pursued through staff development for regular classroom teachers, establishment of demonstration sites, and expansion of the Governor's school curriculum.

### **Costs of Providing Special Education Services**

Although the committee toured special education facilities in the Bismarck Public School system, it did not delve into the delivery of special education services within the middle portion of the continuum. The committee focused on the overall costs associated with special education and the methods by which school districts were reimbursed for their special education expenses. The total expenditures for students with disabilities during the 1991-92 and 1992-93 school years averaged \$65 million each year. The state currently reimburses districts for 27 percent of the excess costs of educating a special needs child, the federal government contributes about eight percent, and the remainder is made up by local effort.

There are six basic methods by which special education can be funded:

1. Flat grant per student.
2. Weighted per-pupil unit.
3. Flat grant per teacher or classroom unit.
4. Weighted teacher or classroom unit.
5. Percentage of teacher or personnel salary.
6. Disbursement based on cost or excess cost.

Through the 1991-92 school year, the method used to reimburse school districts was based on the num-

ber and qualifications of full-time special education instructors employed by a special education unit. A unit was reimbursed on an annual flat grant basis for the cost of specific education personnel employed to deliver education services to special needs children. Beginning with the 1992-93 school year, the Superintendent of Public Instruction has implemented a new reimbursement formula that uses multiple factors, including teacher weighted units that are adjusted to reflect the various methods of service delivery, training, and the percentage of expenditures adjusted for cost and salary differences. Positions are coded according to responsibility and the full-time equivalents are given weighted factors. To calculate a district's percentage of allowable expenditure, a district's weighted full-time equivalent figures are divided by the number of full-time equivalents times 7.50. The funds are then distributed directly to the special education units. There are 32 units in the state.

The new formula is designed to neutralize decisionmaking based solely on finances and to encourage decisionmaking based more on actual needs. The formula so far shows no perceivable pattern of winners and losers. This is in part because some rural education units have pay scales equal to or better than those in urban areas, due to the difficulties incurred in recruiting teachers. Likewise, some of the larger schools utilize more teacher aides. The different staffing selections merely reflect the different philosophies among the special education units.

The committee found that providing special education services and paying for those services has become challenging to the state's school districts. The larger districts, in part because of the services they are able to provide, have become magnet schools as more and more families seeking the services move into the districts. The smaller schools often find themselves ill-equipped to meet the needs of special needs students. The committee found that smaller districts are often not given sufficient lead time to procure necessary or desired staff or to train the staff they do have in order to handle the special needs of their students.

The committee was informed that some of the expectations are unrealistic especially for smaller districts. Having to hire a full-time aide for a special needs student takes up resources that are needed elsewhere. The committee was also informed that mainstreaming special needs children presents logistical problems in that if special needs children are placed in regular classrooms, extra assistance must be provided to regular classroom teachers.

### **Alternatives for the Future**

Superintendents of small school districts urged that the state assume greater responsibility for the costs of educating special needs students. Implementing equalization formulas that would more fairly compensate school districts was suggested, as was sending a message to Congress asking that it provide dollars in addition to mandates or provide a degree of flexibility which would allow a district to assess all of its educational needs and utilize its limited resources in the fashion that would most benefit the greatest number of children.

It was also suggested that using educational ser-

vice agencies could enhance the educational needs of students. Approximately 30 states have an educational service agency system. They range from very sophisticated networks to very rudimentary cooperative units. Regardless of structure, they have the potential to provide special education programs, programs for the gifted and talented, and programs where teachers can share their expertise and provide instruction where talents and teachers are limited. Educational service agencies can also serve a useful purpose in school system management. By using cooperative purchasing, busing, insurance programs, and food programs, a substantial dollar savings can be realized.

### **Committee Considerations**

The committee considered a resolution draft that directed the Legislative Council to study the delivery of services to special needs children from a multiagency perspective and to consider whether services might be enhanced and efficiencies might be improved through better cooperation or consolidation of administrative functions. The committee determined that special education involves more than "education" per se. It involves at the very least a child's health needs, social needs, and emotional needs. When the provision of these services involve several agencies, the committee determined that the opportunity for excessive complexity in program administration and interagency inefficiencies was present and a study could reveal areas for improvement.

The committee considered a resolution draft that directed the Legislative Council to study the implementation of an individualized education program process for any child at the request of a parent or upon the recommendation of a teacher. The committee determined that the individualized education program process was one that could have beneficial applications to the educational process of students other than those having special needs. The resolution draft stressed the importance of parental involvement in a child's education.

The committee considered a resolution draft that urged the Board of Higher Education to include in the teacher preparation curriculum academic and pedagogical training designed to prepare new teachers for the daily challenges of educating the next generation and that encouraged the Board of Higher Education to work with the North Dakota Education Association and the Superintendent of Public Instruction to ensure that certificated teachers, through continuing education, enhance their academic and pedagogical skills for the same purpose. The committee determined that North Dakotans have a right to require that their children's teachers be adequately prepared to teach.

The committee considered a resolution draft that urged the Superintendent of Public Instruction to include the provision of services for gifted and talented students in school accreditation standards. Testimony suggested that the Superintendent of Public Instruction is trying to obtain excellence for all students and that will take staff development, time, and money. Because gifted and talented students might receive as little as three hours a week in a resource room and spend the remainder of their time

with a regular classroom teacher, the committee determined it is critical that a regular classroom teacher have the skills necessary to deal with the needs of such a student. Representatives of the Superintendent of Public Instruction advocated systemic change, not piecemeal tinkering. Consequently, the committee considered an amended version of the resolution draft which urged the Superintendent of Public Instruction to include the provision of performance-based services for all students in the school accreditation standards.

The committee considered a bill draft that required a placement agency to notify a foster care child's school district of residence and the admitting district of the need for an out-of-district placement or admission. The bill draft also required the placement agency to afford the school district of residence an opportunity to participate in any process involving decisions about the child's placement. The bill draft initially extended these provisions to handicapped children placed outside their district of residence for purposes other than education, but the committee amended the draft to refer only to nonhandicapped children.

Testimony indicated that placement agencies recognize the difficulties school districts encounter and make every effort to avoid out-of-home placements but, in some emergency situations, such placements simply cannot be avoided. In accordance with the Department of Human Services' policies and procedures manual, written notification is sent to the resident and admitting school district when a foster child is transferred and that it is expected that school officials and the appropriate social service representatives jointly plan for a child in advance of the new placement.

The committee subsequently amended the bill draft to provide that except in cases of emergency placements or court orders, the district of residence and the admitting district must be notified by the placement agency of the need for an out-of-district placement and must be afforded an opportunity to participate in any process involving decisions about a child's placement.

The committee considered a bill draft that would have allowed a child's parent or guardian or the child's teacher to request that the school district evaluate a child and prepare an individualized education program for the child. The committee determined that the subject matter fell within the parameters of the resolution draft that directed a study of individualized education program processes. The committee also determined that the issue should be studied before any legislative action is taken.

The committee considered a bill draft that would have required each school district to adopt a process by which a parent, guardian, or teacher could request an evaluation of a child thought to be gifted. Once a child is identified as gifted, the school district, together with the child's parents or guardian, would develop an individualized education program for the child. The bill draft would have directed the school district and the child's parents or guardian to use whatever resources are available to enhance the educational opportunities for the child. The committee determined that while every child has special needs,

the bill draft focused on the special needs of only one segment of the population. The committee determined that this subject should be studied within the confines of the resolution that directed a study of individualized education program processes.

The committee considered a bill draft that allowed a child who has not turned five by midnight August 31 in the year of enrollment to demonstrate through a series of tests a readiness to enter kindergarten. The bill draft also allowed a child who has not turned six by midnight on August 31 in the year of enrollment to demonstrate through a series of tests a readiness to enter grade 1.

The committee determined that recognition must be given to the fact that different children have different needs and that the bill draft provided some flexibility in the school admission process.

### **Committee Recommendations**

The committee recommends House Concurrent Resolution No. 3005 to direct the Legislative Council to study the delivery of services to special needs children from a multiagency perspective and to consider whether services might be enhanced and inefficiencies might be improved through better cooperation or consolidation of administrative functions.

The committee recommends House Concurrent Resolution No. 3006 to direct the Legislative Council to study the implementation of an individualized education program process, not otherwise mandated by law, for any child currently enrolled in school, at the request of a parent or upon the recommendation of a teacher.

The committee recommends House Concurrent Resolution No. 3007 to urge the Board of Higher Education to include in the teacher preparation curriculum academic and pedagogical training designed to prepare new teachers for the daily challenges of educating the next generation and to encourage the Board of Higher Education to work with the North Dakota Education Association and the Superintendent of Public Instruction to ensure that certificated teachers, through continuing education, enhance their academic and pedagogical skills for the same purpose.

The committee recommends Senate Concurrent Resolution No. 4009 to urge the Superintendent of Public Instruction to include the provision of performance-based services for children from kindergarten through grade 12 as a standard for the accreditation of public and private schools in the state.

The committee recommends House Bill No. 1055 to provide that both a child's school district of residence and the admitting district must be notified by a placement agency of the need for an out-of-district placement or admission, and that the school district of residence must be afforded an opportunity to participate in any process involving decisions about the child's placement.

The committee recommends House Bill No. 1056 to allow a child who has not turned five by August 31 of the year of enrollment to demonstrate through a series of tests, readiness to enter kindergarten. The bill also allows a child who has not turned six by midnight on August 31 in the year of admission to demonstrate through a series of tests, readiness to enter first grade.

# WASTE MANAGEMENT COMMITTEE

The Waste Management Committee was assigned four studies. House Concurrent Resolution No. 3041 directed a study of the use of recycled materials by state agencies and institutions, with emphasis on determining areas in which use of recycled materials could be required by law. House Concurrent Resolution No. 3042 directed a study of the problems and benefits associated with waste management, including the operation and effect of legislation relating to waste management, whether the Department of Health and Consolidated Laboratories is the appropriate state agency for waste management, and the effect of establishing district and state waste management plans. Senate Bill No. 2090 directed a study of the effects of various methods of solid waste disposal and of solid waste disposal facilities, with emphasis on the disposal of ash resulting from the incineration of municipal solid waste. House Concurrent Resolution No. 3027 directed a study of the feasibility and ramifications of reducing the ground pollution of North Dakota landfills, with an emphasis on encouraging recycling efforts to preserve and protect our land and water.

Committee members were Representatives Bill Oban (Chairman), Jack Dalrymple, June Y. Enget, Alan Erickson, Odell Flaagan, Mick Grosz, Roy Hausauer, Eugene Nicholas, Alice A. Olson, Gary Porter, Jennifer Ring, Orville Schindler, Bill Starke, Herb Urlacher, Gerry L. Wilkie, and Wade Williams and Senators Layton W. Freborg, Jayson Graba, Byron Langley, Jay Lindgren, Dean Meyer, and Steven W. Tomac.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1992. The Council accepted the report for submission to the 53rd Legislative Assembly.

## USE OF RECYCLED MATERIALS STUDY

### Background

The study of the use of recycled materials by state agencies and institutions was proposed as a result of the enactment of North Dakota Century Code (NDCC) Section 54-44.4-08 which requires state agencies to purchase increasing amounts of recycled paper and paper products beginning July 1, 1993. The proponents of the study stated that the use of recycled materials by state agencies and departments should be studied before purchasing mandates become effective.

### Federal Law

Under the federal Resource Conservation Recovery Act of 1976 and the Hazardous Solid Waste Amendments of 1984, the United States Environmental Protection Agency is required to develop guidelines to help governments buy recycled products. The Environmental Protection Agency has developed guidelines that designate items that are or can be produced with recovered materials and set forth recommended practices with respect to the procurement of recovered materials and items containing recovered materials. The guidelines also provide information as to the availability, relative price, and

performance of the recovered materials.

The Environmental Protection Agency has developed guidelines for several recovered products, including recycled paper and paper products, oil, and tires. In addition, guidelines have been established for building materials such as cement and concrete containing fly ash and building insulation products.

The federal guidelines for procurement of paper and paper products containing recovered materials apply to all paper and paper products purchased by procuring agencies using appropriated federal funds when the agency purchases \$10,000 or more of any one of the paper products during the course of a fiscal year or when the cost of those items or of functionally equivalent items purchased during the preceding year was \$10,000 or more. Under the rules, the procurement guidelines apply to federal agencies, state and local agencies using appropriated federal funds, and to persons contracting with any federal, state, or local agencies with respect to work performed under contracts involving appropriated federal funds. The federal rules provide that purchases of paper and paper products that are unrelated or incidental to federal funding and not the direct result of a federal contract, grant, loan, funds disbursement, or agreement are not covered by the guidelines. However, indirect purchases of paper and paper products made by a procuring agency, such as purchasing resulting from federal grants, loans, and similar forms of disbursements that the agency intended to be used for the procurement of paper or paper products are included under the guidelines.

### North Dakota Law Relating to Recycling

North Dakota Century Code Section 54-44.4-07 encourages any state agency or institution authorized to purchase products, whenever possible, to specify the use of soybean-based ink when purchasing newsprint printing services. In addition, 15 percent of the garbage can liners purchased by a state agency or institution must be starch-based. The percentage of starch-based garbage can liners purchased must increase by five percent annually, after July 1, 1990, until at least 50 percent of the garbage can liners purchased are starch-based. In requesting bids for paper products, starch-based plastic products, and soybean-based inks, the Office of Management and Budget must request information on the recycled content of those products.

Under NDCC Section 54-44.4-08, any state agency or institution authorized to purchase products must ensure that beginning July 1, 1993, at least 10 percent of the total volume of paper and paper products being purchased for state agencies and institutions must contain at least 25 percent recycled material. In addition, beginning January 1, 1994, at least 30 percent of the total volume of paper and paper products being purchased must contain at least 25 percent recycled material; beginning January 1, 1996, at least 40 percent of the total volume of paper and paper products being purchased must contain at least 25 percent recycled material; beginning January 1, 1998, at least 60 percent of the total volume of paper and

paper products being purchased must contain at least 25 percent recycled material; and beginning January 1, 2000, at least 80 percent of the total volume of paper and paper products being purchased must contain at least 25 percent recycled material.

### **Use of Recycled Materials by Other State Governments**

The committee reviewed laws relating to the use of recycled materials by state governments in selected states.

#### **Minnesota**

Minnesota has established a state government resource recovery program to promote the reduction of waste generated by state agencies, the separation and recovery of recyclable and reusable commodities, and the procurement of recyclable commodities and commodities containing recycled materials. By December 31, 1993, the Commissioner of Administration must recycle at least 40 percent by weight of the solid waste generated by state offices and other operations located in the metropolitan area.

In addition, the commissioner is required to develop and implement a cooperative purchasing program to include state agencies, local governmental units, and where feasible, other state governments and the federal government, for the purpose of purchasing materials made from recycled materials. The Governors of Minnesota and Wisconsin have appointed a joint recycling procurement task force to explore ways the two states can promote recycled products. Minnesota law also establishes a 10 percent price preference on state purchases of recycled products.

Each state agency, local unit of government, or school district in the metropolitan area is required to ensure that facilities under its control from which mixed municipal solid waste is collected has three containers for at least three recyclable materials and to transfer all recyclable materials collected to a recycler. By January 1, 1993, all state agencies or local units of government or school districts outside the metropolitan area must adhere to those requirements.

#### **South Dakota**

The South Dakota Bureau of Administration is required, when purchasing paper and paper products, to purchase recycled paper if the price is competitive and the quality adequate for the purpose intended. By statutory enactment in 1991, the Bureau of Administration is required to establish as a goal that at least 10 percent of the total volume of paper and paper products purchased by the state contain recycled paper. The goal increases to 20 percent for fiscal year 1993, 30 percent for fiscal year 1994, 40 percent for fiscal year 1995, and 50 percent for fiscal year 1996. After 1996 the goal is at least 50 percent.

#### **Various Other States**

At least one-half the states have some type of recycling procurement laws. For example, several states have price preferences for recycled products. Many states have also established goals to increase purchases of recycled products.

### **Testimony**

The Office of Management and Budget, through its Purchasing Division, is responsible for implementing the requirement to purchase recycled paper for all state agencies and institutions in the executive branch of state government. Representatives of the Office of Management and Budget testified that the Office of Management and Budget generally allows each agency to determine whether to purchase recycled materials. Two particularly troublesome aspects in purchasing recycled paper products are the higher price and lower quality of the recycled paper products. However, with respect to paper products such as paper towels and toilet paper, the price, quality, and availability of those products does not appear to be a problem.

The committee received testimony from representatives of the State Parks and Tourism Department regarding recycling activities in state parks. The department has implemented a comprehensive recycling program at the Cross Ranch State Park. In addition, recycling is encouraged at all other state parks. However, the ultimate decision with respect to recycling programs at state parks is left to each park manager.

The committee also received testimony from a representative of the Facility Management Division of the Office of Management and Budget regarding recycling activities within the Capitol complex. Because of financial constraints, including poor markets for recyclable materials, recycling by state agencies has been slow to develop. However, a paper separation recycling project has been implemented at the Capitol complex and the amount of waste from the Capitol complex which is landfilled has decreased.

At a committee meeting in Grand Forks, the committee received testimony from officials from the University of North Dakota. The university has been using recycled materials such as building materials extensively. In addition, the university has established a recycling policy and is working with the Board of Higher Education in expanding recycling at the university. The university system, as a whole, is developing a recycling policy through which institutions of higher education would be required to establish recycling committees to review recycling practices, identify options including markets for recyclable materials, and prepare recommendations and identify means for implementation of the practices.

### **Committee Considerations**

The committee considered a bill draft that required the Office of Management and Budget to prepare and submit to the Governor and the Legislative Council by July 1, 1994, a comprehensive solid waste management plan that would assess the ability of each state agency, department, and institution to reduce the amount of solid waste it generates and increase the amount of recycled products it uses.

Representatives of the Office of Management and Budget testified that other agencies such as the Department of Health and Consolidated Laboratories would be better qualified to conduct the study. Proponents of the bill draft contended that because the Office of Management and Budget is the main purchasing agency for state agencies and departments,

the Office of Management and Budget is the appropriate agency to conduct the study. Others said that a committee of state employees appointed by the Governor could conduct the study most cost efficiently.

The committee determined that state agencies, departments, and institutions should set an example with respect to recycling and the use of recycled materials. The committee also generally determined that budget constraints coupled with the additional cost of purchasing recycled materials may create some difficulty for state agencies, departments, and institutions in increasing the amount of recycled products used. In addition, the committee determined that a committee of state employees could conduct the study rather than a state agency that likely would have to hire an additional employee to conduct the study.

### **Recommendation**

The committee recommends Senate Bill No. 2049 to require the Governor to appoint a comprehensive solid waste management planning committee consisting of eleven state employees to assess the ability of each state agency, department, and institution to reduce the amount of solid waste it generates and increase the amount of recycled products it uses.

## **PROBLEMS AND BENEFITS ASSOCIATED WITH WASTE MANAGEMENT STUDY**

### **Background**

The 1991 Legislative Assembly adopted House Bill No. 1060, which established eight solid waste management districts and required each district to prepare a plan that assesses its ability to manage and plan properly for adequate waste management capacity. The committee held meetings in each of the eight districts and received comments from local officials and interested persons with respect to the establishment and operation of the districts.

### **Federal Law**

The Resource Conservation and Recovery Act of 1976 was enacted to address the problem of solid waste disposal. The Act and its amendments, including the Solid Waste Disposal Act Amendments of 1980 and the Hazardous and Solid Waste Amendments of 1984, place responsibility for solid waste management with the Environmental Protection Agency.

The administrator of the Environmental Protection Agency is required to adopt rules for the identification of characteristics of hazardous wastes and to list the hazardous wastes subject to regulations; adopt standards applicable to transporters and generators of hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities; and to establish regulations requiring owners or operators to obtain a permit to operate or construct facilities for the treatment, storage, or disposal of hazardous waste. The administrator is also required to adopt guidelines to assist states in developing and administering state hazardous waste programs. States and political subdivisions are prohibited from imposing requirements less stringent than those imposed by federal laws and rules. Each state is required to undertake a continuing program to com-

pile, publish, and submit to the administrator an inventory of hazardous waste storage or disposal sites in the state.

The administrator of the Environmental Protection Agency is required to adopt guidelines for state or regional solid waste plans adopted by states and regional authorities. The Act prescribes certain requirements for approval of state plans. One requirement is that the state plan provide for resource conservation and recovery and for the disposal of solid waste in landfills in a manner that is environmentally sound.

The administrator is also required to adopt guidelines relating to landfills. Disposal facilities that fail to satisfy the criteria for sanitary landfills must be classified as open dumps. State solid waste management plans must provide for the closing or upgrading of all open dumps and must prohibit the establishment of open dumps.

The Environmental Protection Agency has finalized rules that establish minimum standards for municipal solid waste landfills that receive waste after October 9, 1993, including location restrictions, design criteria, operating criteria, ground water monitoring, corrective action, and closure and postclosure care. The closure and postclosure care requirements provide that a final cover system designed to minimize infiltration and erosion be installed and postclosure care be conducted for 30 years.

There are several proposals under consideration by Congress which propose to amend and reauthorize the Act. In a 1988 report to Congress, the Environmental Protection Agency concluded that state and federal regulations concerning nonhazardous solid wastes are inadequate. Thus, the bills under consideration by Congress generally concentrate on nonhazardous solid waste issues. Generally, the federal proposals call for greater state solid waste management planning and source reduction and increased recycling of municipal solid waste.

### **North Dakota Law**

The Department of Health and Consolidated Laboratories is responsible for solid waste management regulation. The department also is responsible for regulating hazardous waste, ionizing radiation, air pollution, water distribution and wastewater systems, and ground water protection.

North Dakota Century Code Chapter 23-29 addresses the transportation and disposal of solid waste. The department is authorized to adopt rules governing solid waste storage, collection, transportation, handling, resource recovery, and disposal. In addition, the department is required to adopt rules to establish categories of solid waste and solid waste management facilities based on waste type, facility operation, or other facility characteristics; to establish standards and requirements for each category of solid waste management facilities; to establish financial assurance requirements that must be met by any person proposing construction or operation of a solid waste management facility; and to conduct environmental compliance background reviews for applicants for permits to construct or operate solid waste management facilities.

The department also is required to establish proce-



dures for permits governing the design, construction, operation, and closure of solid waste management facilities and systems. Operators of solid waste management facilities and solid waste transporters are required to obtain a permit from the department.

The department may deny an application for a permit if in the department's background review it finds that an applicant for a permit has intentionally misrepresented or concealed any material fact from the department, has obtained a permit by intentional misrepresentation or concealment of a material fact, has been convicted of a felony or pleaded guilty or nolo contendere to a felony involving the laws of any state or the federal government within three years preceding the application for the permit, or has been adjudicated in contempt of an order of any court enforcing the laws of this state or any other state or the federal government within three years preceding the application for the permit. The department is required to consider the relevance of the offense to the business to which the permit is issued, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, and the ownership and management structure in place at the time of the offense.

All land in the state must be within a solid waste management district. The boundaries of each district correspond to the boundaries of the eight regional planning councils. Each district is governed by a board consisting of representatives of cities and counties within the district and representatives of licensed waste disposal facilities and waste haulers. Each district is required to prepare and submit to the department by January 1, 1993, a solid waste management plan that includes a review of the district's ability to manage and plan properly for adequate capacity, accessibility, and waste control flow. The plan must take into consideration existing waste transportation patterns and the ability of existing landfills to handle solid waste. By July 1, 1993, the department is required to incorporate all of the solid waste management plans into a comprehensive statewide plan.

Political subdivisions are permitted to enact and enforce solid waste management ordinances if the ordinances are equal to or more stringent than Chapter 23-29 and any rules adopted pursuant to that chapter. The governing bodies of political subdivisions participating in a solid waste management district may establish and operate a waste management authority and provide solid waste management services and determine charges for those services.

The statewide coordinating committee assists the solid waste management districts in managing and regulating solid waste and coordinates efforts of the districts with state agencies. In addition, the coordinating committee is required to review alternative means of managing solid waste including a review of forms of public ownership and financial assurance mechanisms for waste management facilities. The statewide coordinating committee consists of a representative of each solid waste management district, a representative of the department, the State Engineer, and the State Geologist.

The State Engineer and the State Geologist are required by law to complete a site suitability review of

each existing municipal waste landfill within the state by July 1, 1995. The reports of the reviews must be provided to the department for use in site improvement, site remediation, and landfill closure. The department, in cooperation with the State Engineer and State Geologist, is required to develop criteria for siting a solid waste disposal facility based upon potential impact on environmental resources. An application for a landfill permit must be reviewed for site suitability by the department after consultation with the State Engineer and State Geologist before any site development.

North Dakota law prohibits the department from allowing the storage or disposal of solid waste from outside the state, unless it is demonstrated that the governing authority or the generator of the solid waste from outside the state has an effective program for waste quality control and for waste characterization.

Each municipal waste landfill and municipal waste incinerator must have at least one individual certified by the department on site at all times during the operation of the landfill or incinerator. The department is required to adopt training standards and certification requirements for inspectors.

State law establishes a solid waste management fund for the purpose of providing grants or low interest loans to political subdivisions for waste reduction, planning, resource recovery, and recycling projects with an emphasis on marketing. The revenue for the fund is generated by a monthly surcharge imposed on each person or political subdivision that provides municipal waste collection services. The surcharge for each household account is 20 cents per month. The monthly surcharge for commercial accounts varies based upon the amount of the monthly waste collection fee. The monthly surcharge took effect on January 1, 1992.

### **Interstate Transportation of Waste**

Article 1, Section 8, of the United States Constitution provides that the Congress has the power to regulate commerce among the several states. The United States Supreme Court has long held that the "dormant" aspect of the commerce clause prohibits states from "advanc[ing] their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state." **H.P. Hood and Sons, Inc. v. Du Mond**, 336 U.S. 525, 535 (1949).

### **Philadelphia v. New Jersey**

The United States Supreme Court first addressed the issue of whether the interstate movement of solid wastes was subject to the provisions of the commerce clause in **Philadelphia v. New Jersey**, 437 U.S. 617 (1978). In that case, the Supreme Court held that a New Jersey statute prohibiting the importation of most solid or liquid waste that originated or was collected outside the state was in violation of the commerce clause. The Court held that all objects of interstate trade merit commerce clause protection. The Court indicated that even if the ultimate aim of the New Jersey legislation was to reduce the waste disposal costs of New Jersey residents or to save remaining open lands from pollution, the state can accomplish its goals by less discriminatory means

such as slowing the flow of all waste into the state's remaining landfills regardless of origin. The Court stated that the crucial point is the attempt by one state to isolate itself from a problem common to many by erecting barriers against the movement of interstate trade, a clearly impermissible legislative effort.

Between 1978 and 1992, various lower courts attempted to distinguish the **Philadelphia v. New Jersey** decision and allow states to impose certain restrictions on the interstate transportation of wastes. However, the Supreme Court recently reaffirmed its **Philadelphia v. New Jersey** decision in two decisions related to the interstate transportation of waste.

#### **Chemical Waste Management, Inc. v. Alabama**

In **Chemical Waste Management, Inc. v. Alabama**, 112 S. Ct. 2009 (June 1, 1992), the United States Supreme Court held invalid as a violation of the commerce clause an Alabama statute that imposed a higher fee on hazardous waste disposed at commercial facilities in Alabama. The Supreme Court stated that the additional fee facially discriminates against hazardous waste generated outside Alabama and discouraged the full operation of Chemical Waste Management's facility. The Court determined that Alabama had not met its burden of showing the unavailability of nondiscriminatory alternatives adequate to serve the local interests at stake, which were to reduce the amount of waste entering the hazardous waste disposal facility. The Court emphasized that possible future financial and environmental risks to be borne by Alabama do not vary with the origin of the waste.

#### **Fort Gratiot Sanitary Landfill, Inc. v. Michigan Department of Natural Resources**

In **Fort Gratiot Sanitary Landfill, Inc. v. Michigan Department of Natural Resources**, 112 S. Ct. 2408 (June 1, 1992), the United States Supreme Court held that waste import restrictions that provided that solid waste generated in another county, state, or country could not be accepted for disposal unless explicitly authorized in the receiving county's plan unambiguously discriminated against interstate commerce and are appropriately characterized as protectionist measures that do not withstand commerce clause scrutiny. The Court indicated that the waste import restrictions clearly discriminate against interstate commerce because the restrictions authorize each county in the state to isolate itself from the national economy and afford local waste producers complete protection from competition from out-of-state producers seeking to use local waste disposal areas. The Court stated that a state may not avoid the effect of the commerce clause by curtailing the movement of articles of commerce through subdivisions of the state rather than through the state itself because the state provided no valid health and safety reason for limiting the amount of waste that a landfill operator may accept from outside the state, but not the amount the operator may accept from inside the state. The Court indicated that its conclusion may be different if the imported waste raised health or other concerns not presented by Michigan waste.

#### **Storage of Spent Nuclear Fuel**

The federal Nuclear Policy Act of 1982 authorized a process for studying the feasibility of siting a monitored retrievable storage facility for nuclear waste. The Nuclear Policy Amendments Act of 1987 provided for the appointment by the President of a nuclear waste negotiator. The responsibility of the negotiator is to find a state or Indian tribe willing to host a monitored retrievable storage facility. The negotiator and the United States Department of Energy initiated a process through which states, local governments, or Indian tribes could apply for grants of up to \$100,000 to study the feasibility of locating a potential site for a monitored retrievable storage facility. After a jurisdiction has completed the initial feasibility study, the jurisdiction may be eligible to obtain additional grants from the Department of Energy to proceed with the possible siting of a monitored retrievable storage facility. If a jurisdiction is selected as a monitored retrievable facility site, the state or Indian tribe would be entitled to enter into a benefits agreement with the Department of Energy. The agreement would include \$5 million per year until spent nuclear fuel is received at the facility and \$10 million per year while the facility is in operation. In addition, the agreement may contain any other terms negotiated by the state including infrastructure improvements. Any agreement to site a monitored retrievable storage facility must be approved by Congress.

#### **Testimony and Committee Considerations Spent Nuclear Fuel**

The committee received a request from a Georgia corporation, the Nuclear Assurance Corporation, to apply for the initial feasibility study grant to determine the feasibility of siting a monitored retrievable storage facility in North Dakota. Representatives of the Nuclear Assurance Corporation offered to work with the Legislative Council on a consulting basis in the performance of the feasibility study.

Proponents of the study testified that the study would only determine the feasibility of establishing a monitored retrievable storage facility in the state and would not obligate the state to accept such a facility. The actual siting of a facility in the state would have to be approved by the Legislative Assembly, the Governor, and Congress. They argued that the possible siting of a facility in North Dakota would provide a large number of high paying jobs and substantial economic benefits.

Opponents of the study testified that storage of spent nuclear fuel is not the type of economic development needed in this state. In addition, they argued that if the state accepted the grant and showed interest in siting a facility, the federal government may force the state to accept the siting of a facility. Opponents of the study also argued that although a monitored retrievable storage facility is envisioned to be only a temporary site, the lack of a permanent site may force the temporary site to become a permanent facility. Opponents to the study also expressed concern with regard to the safety of the storage of spent nuclear fuel.

The committee requested the Legislative Council to apply for the feasibility study grant and to consult

with the University of North Dakota Energy and Environmental Research Center and the National Conference of State Legislatures with respect to providing assistance with the study. However, at a meeting in July 1991, the Legislative Council voted to not proceed with the grant application.

### **Solid Waste Management Districts**

The committee received a great deal of testimony at the meetings held in each of the solid waste management districts regarding the organization and structure of the districts. Generally, the district concept was supported. Some concern was expressed, however, with respect to representation on the district boards. Each district board must include a representative of each county within the district and a representative of the cities within each county in the district. Because those representatives are chosen by the political subdivisions involved, there is no guarantee that the largest cities in the district will have any representation on the district board. Representatives of some larger cities expressed concern that a district board may have the authority to direct a city to participate in the construction and operation of a district-operated landfill rather than continue to use a facility constructed and paid for by the city.

The committee considered three bill drafts relating to the structure of solid waste management districts. One bill draft would have prohibited a solid waste management district from imposing any fee, surcharge, or tax that would apply within the jurisdictional limits of a city that deposits its municipal waste in a landfill that is approved by and meets all requirements established by the Environmental Protection Agency for municipal solid waste landfills. The bill draft also would have limited the solid waste management surcharge imposed under NDCC Section 23-29-07.3 to the rate applicable as of July 1, 1992, for waste collected in a city that deposits its municipal waste in a landfill that is approved by and meets all requirements established by the Environmental Protection Agency for municipal solid waste landfills.

The second bill draft would have allowed a city that deposits its municipal waste in a landfill that accepts on an average 150 tons of solid waste per day and which is approved by and meets all requirements established by the Environmental Protection Agency for municipal solid waste landfills to act as a solid waste management district by itself or with any other city that deposits its municipal waste in a landfill that accepts on an average at least 150 tons of municipal solid waste per day and which is approved by and meets all requirements established by the Environmental Protection Agency for municipal solid waste landfills. The bill draft also would have limited the solid waste management surcharge imposed under Section 23-29-07.3 to certain specified amounts that were approximately one-half of the current amounts.

The third bill draft considered by the committee provided that the governing board of each solid waste management district include a representative of each city in the district which deposits its waste in a landfill meeting all Environmental Protection Agency requirements. Because every city in the district will eventually be depositing its waste in an approved landfill, the committee determined that assured rep-

resentation should be provided only to cities of more than 10,000 population.

Committee members expressed concern that the district boards not be controlled by the largest population centers in the district. The committee determined, however, that the largest cities in the district should have some representation on the district board.

### **Solid Waste Management Facilities**

The committee received testimony indicating that public notice of the proposed establishment of a solid waste management facility is not always adequate to provide an opportunity for opponents of the facility to address the issue. Because public meetings are not always required with respect to the siting of a facility, a facility may be issued a permit without comments from the public.

The committee considered a bill draft that required an applicant for a solid waste management facility permit to provide written notice of the application to the solid waste management district board of the district in which the facility is to be located. The Department of Health and Consolidated Laboratories would be required to provide public notice in the official newspaper in the county in which the facility is to be located that the department is considering an application for a solid waste management facility. If the jurisdiction with the zoning authority over the area in which the facility is to be located has not held a public hearing regarding the siting of the facility, the solid waste management district board of the district in which the facility is to be located would be required to conduct a public meeting to receive comments regarding the siting of the facility before the department could issue a permit for the facility.

The committee determined that there should be a public meeting held before the siting of a facility. Although a meeting held by the district board would be for informational purposes only, members of the public could express their support or opposition to the siting of a facility and that support or opposition would be forwarded to the department for review prior to the issuance of a permit.

The committee considered a bill draft that would have required cities, counties, and townships that exercise zoning authority to adopt zoning regulations specifically regulating solid waste management facilities. Proponents of the bill draft testified that some rural areas of the state have no zoning regulations that address the siting of solid waste management facilities and that each zoning authority should be required to adopt regulations specifically addressing solid waste management facilities. Opponents of the bill draft argued that each zoning authority can regulate solid waste management facilities and the bill draft is not necessary. They stated that additional mandates for local governments are not needed.

The committee considered a bill draft that would have allowed the board of county commissioners of a county in which a solid waste management facility is to be located to call a special election to allow the qualified electors of the county to vote to approve or disapprove of the facility. The bill draft also would have allowed the board of county commissioners to call a special election to allow the qualified electors of the county to vote to approve or disapprove of an

existing facility. The bill draft also provided that the county would have been required to provide just compensation to the owner or operator of the facility for the loss of use of the property if the facility were disapproved. After revisions, the bill draft would have allowed the board of county commissioners of a county in which a solid waste management facility is to be located to call a special election to allow the qualified electors of the county to vote to approve or disapprove of the siting of a new facility only. The bill draft would have required that the election be held within 60 days after receiving notice from the Department of Health and Consolidated Laboratories of the department's intention to issue a permit for a solid waste management facility. The bill draft also provided that if a majority of the qualified electors voting in the election voted to disapprove of the facility, the department would have been prohibited from issuing the permit and the facility could not have been located in that county.

The committee determined that the public should have the ability to comment on the siting of a solid waste management facility. However, the committee determined that allowing a vote on the siting of a facility would likely preclude the siting of any facility in the future. In addition, there were concerns with respect to the fairness and the constitutionality of the proposals.

The committee received testimony from representatives of the Department of Health and Consolidated Laboratories regarding the hiring of inspectors for waste disposal facilities. The department has required each facility operator to pay for the hiring of a facility inspector as a condition of a permit for certain facilities. Because the department is limited in the number of employees it may hire and because local governmental units have not expressed an interest in contracting for the hiring of an inspector, the department has had difficulty in placing inspectors at the facilities.

The committee considered a bill draft that allowed solid waste management districts to inspect solid waste management facilities within the district and accept and expend funds provided by any public entity or the inspected facilities to defray the costs of inspections. Although under existing law the districts likely have the power to employ inspectors and inspect facilities, the committee indicated a desire to make it clear that the districts may inspect certain solid waste management facilities. However, the committee determined that the districts should only inspect municipal waste facilities and the department should be responsible for hiring inspectors for other types of waste disposal facilities because of the greater expertise required.

The committee considered a bill draft that required the Department of Health and Consolidated Laboratories to employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each waste management facility that accepts hazardous waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. Proponents of the bill draft testified that a qualified person is needed onsite at those types of facilities to monitor the operation of the facilities and to have the authority to stop the operation of a facility if a health

or environment emergency occurs at the facility.

The committee determined that facilities accepting industrial waste should also be required to have a department inspector onsite. However, the committee agreed with representatives of the energy industry that a department inspector is not necessary for energy conversion facilities and coal mining operations that dispose of solid waste onsite.

The bill draft was revised to include industrial waste facilities and to exempt energy conversion facilities and coal mining operations that dispose of solid waste onsite. The bill draft provided that if an inspector discovered a condition at a facility that would be likely to cause imminent harm to the health and safety of the public or environment, the inspector would be required to notify the department and the department would issue an order requiring action necessary to meet the emergency.

The committee received information from representatives of the Department of Health and Consolidated Laboratories indicating that there are many incinerators and other air pollution sources such as coal-fired pollution sources in the state which are not required to contain pollution control systems. The committee considered a bill draft that would have directed the department to require the owner or operator of any incinerator or coal-fired pollution source to install and operate pollution control systems designed to prevent air contaminant emissions.

Opponents of the bill draft testified that the fiscal effect of the bill draft would be in the hundreds of millions of dollars. Representatives of the energy industry testified that the coal-fired power plants operating in North Dakota are among the most efficient in the world.

Representatives of the waste management industry testified that federal financial assurance requirements provide that the owners and operators of municipal solid waste landfills must establish financial assurance for postclosure care through trust funds, surety bond guarantees, letters of credit, insurance, or assumption of responsibility by the state. They testified that some form of state responsibility would be the best method to provide affordable financial assurance and the second best method would be through a trust fund. A landfill owner or operator using the trust fund mechanism to provide financial assurance must make the required payments into the trust fund annually over the term of the initial permit or over the remaining life of the landfill, whichever is shorter. State law provides that the department may issue permits for solid waste management facilities for a term of not more than five years.

The committee considered a bill draft that increased the maximum term of a permit for a solid waste management facility or a solid waste transporter from five years to 10 years. Proponents of the bill draft testified that the increase in the maximum term of a permit would assist in achieving the financial assistance requirements and reduce the burden of the landfill operator from having to renew permits after only five years. Representatives of the Department of Health and Consolidated Laboratories testified that the longer permit term would not reduce the department's authority to periodically inspect and monitor the operation of the facilities.

The committee considered a bill draft submitted by the North Dakota Waste Handlers Association which would have established a state bond fund to provide financial assurance for landfill operators. Proponents of the bill draft argued that a state-supported fund is the only economically feasible alternative for financial assurance. Because the statewide coordinating committee is currently studying the financial assurance issue and is developing proposals to address the problem, the committee determined that it would be premature to establish a bond fund without adequate information regarding the funding necessary to sustain the fund.

The committee received testimony with respect to the ownership structure of companies operating waste management facilities. In some circumstances, a corporation may avoid responsibility for liability incurred by a subsidiary corporation operating a waste management facility. The committee considered a bill draft that would have required the Department of Health and Consolidated Laboratories to require as a condition of a permit for a solid waste management facility that any entity that controls the permit holder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permit holder.

The committee determined that an operator of a solid waste management facility should not be able to avoid liability through subsidiary corporations. Under principles of existing law, a parent corporation may be held liable for the acts of its subsidiary if the parent corporation exercises a significant amount of control over the acts of the subsidiary. Therefore, the committee determined that the bill draft may not be necessary. In addition, concerns were expressed with respect to the effect of the bill draft on the operation of solid waste management facilities by solid waste management district boards.

The committee considered a bill draft that would have established an environmental protection fund to provide for the monitoring of waste management facilities. The bill draft would have established a \$50 per ton fee for municipal solid waste accepted at any landfill that accepts an average of over 400 tons per day of municipal solid waste; a \$50 per ton fee for industrial waste accepted at any landfill that accepts an average of over 50 tons per day of industrial waste; a \$50 per ton fee for any infectious waste accepted at any landfill that accepts an average of over 20 tons per day of infectious waste; a \$50 per ton fee for any solid waste incinerated at a facility that accepts an average of over 20 tons per day of solid waste; and a \$100 per ton fee for any hazardous waste accepted at a waste disposal facility that accepts an average of over five tons per day of hazardous waste.

Proponents of the bill draft testified that the bill draft would discourage the establishment of large waste management facilities in the state because no current facility in the state accepts an amount of waste greater than that specified in the bill draft. Opponents of the bill draft argued that establishing large fees based upon the amount of waste a facility accepts may be shortsighted because of the uncertainty with respect to waste flow in the state.

## **Department of Health and Consolidated Laboratories**

The committee reviewed the duties and responsibilities of the Department of Health and Consolidated Laboratories and determined that the department is the state agency best suited to handle waste management responsibilities.

North Dakota Century Code Section 23-01-04.1 provides that the Department of Health and Consolidated Laboratories may not enact environmental rules more stringent than corresponding federal regulations unless the department makes a written finding after public comment and hearing that corresponding federal regulations are not adequate to protect the public health and environment of the state. Representatives of the department testified that that requirement places a substantial economic burden on the department. For example, the cost of justifying the more stringent requirements in the proposed solid waste rules was approximately \$12,000.

The committee considered a bill draft that would have reduced the responsibilities of the department with respect to the justification of environmental rules that are more strict than federal rules. The bill draft also would have removed the provision that allows any person to petition the department to review and revise any rules identified to be more stringent than federal rules within nine months after the filing of the petition.

Opponents of the bill draft contended that if the department adopts rules more stringent than federal rules, the department should have a reasonable basis for doing so and should be able to provide written documentation and studies to demonstrate the necessity of the rules. They argued that the department could reduce costs by relying on previously conducted studies during the justification process rather than conducting new studies.

## **Continued Study**

The committee considered a resolution draft that directed the Legislative Council to study the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans during the next interim. The committee determined that continued study of solid waste management would be a means to monitor the evolution of solid waste management districts and the operation and effect of the solid waste management plans developed by the district boards and the Department of Health and Consolidated Laboratories.

## **Recommendations**

The committee recommends House Bill No. 1057 to provide that each solid waste management district board must include a representative of each city in the district which has a population of more than 10,000; allow solid waste management districts to inspect municipal waste management facilities within the district and accept and expend funds provided by any public entity or the inspected facilities to defray the cost of inspections; and increase the maximum term of a solid waste management facility or solid waste transporter permit from five years to 10 years. The bill also requires an applicant for a solid waste man-

agement facility to provide written notice of the application to the solid waste management district board of the district in which the facility is to be located and requires the Department of Health and Consolidated Laboratories to provide public notice in the official newspaper of the county in which the facility is to be located that the department is considering an application for a solid waste management facility. The bill provides that if the jurisdiction with zoning authority over the area in which the facility is to be located has not held a public hearing regarding the siting of the facility, the solid waste management district board of the district in which the facility is to be located is required to conduct a public meeting to receive comments regarding the siting of the facility before the department may issue a permit for the facility. The bill is a consolidation of provisions contained in four of the bill drafts considered by the committee which related to solid waste management districts and solid waste management facilities. The bill also includes the provisions relating to the extension of the moratorium on permit applications for the construction or operation of a landfill in which ash resulting from the incineration of municipal solid waste is disposed.

The committee recommends Senate Bill No. 2050 to require the Department of Health and Consolidated Laboratories to employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. The bill requires the department to assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal waste an annual fee to pay the salaries, wages, and expenses associated with employing an inspector for the facility. The bill would not apply to energy conversion facilities or coal mining operations that dispose of solid waste onsite.

The committee recommends House Concurrent Resolution No. 3008 to direct the Legislative Council to study the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans.

## **WASTE DISPOSAL FACILITY AND ASH DISPOSAL STUDY**

### **Background**

Senate Bill No. 2090 (1991) directed a study of the effects of various methods of solid waste disposal and of solid waste disposal facilities, with emphasis on the disposal of ash resulting from the incineration of municipal solid waste. In addition, the bill required the Department of Health and Consolidated Laboratories to suspend for two years any decisions related to permit applications received after January 1, 1991, for the construction or operation of a landfill in which ash resulting from the incineration of municipal solid waste is disposed. The bill stated that the moratorium was established to provide the opportunity for additional study of the environmental effects of the disposal of municipal solid waste ash and the regulations necessary to obtain a permit for those solid waste disposal facilities. The moratorium does not

apply to court-ordered reapplications involving an application originally received prior to January 1, 1991, and which is limited to the type and amount of waste represented in the original application.

## **Testimony and Committee Considerations**

The committee held a meeting in Sawyer and toured a landfill designed to accept ash resulting from the incineration of municipal solid waste. The committee received testimony indicating that the disposal of ash in landfills could result in the contamination of ground water reserves because of the presence of heavy metals in the ash. The committee also received testimony indicating that advanced technologies can reduce the risk of metals leaching into ground water supplies.

Representatives of the Department of Health and Consolidated Laboratories informed the committee that the department is in the process of developing rules to regulate ash landfills. The rules would not be finalized, however, until resolution of the permit dispute with respect to the Sawyer facility.

The committee received a request from the Attorney General and representatives of the Department of Health and Consolidated Laboratories to extend the moratorium on decisions related to ash landfills until January 1, 1995. They testified that additional time is needed to develop rules with respect to the regulation of ash landfills. Opponents of extending the moratorium argued that the department has had almost 18 months to develop those rules and extending the moratorium may only delay the rulemaking process further. The committee determined that a shorter extension of the moratorium may be necessary to allow the department to complete the rulemaking process.

## **Recommendations**

The committee recommends that the moratorium on permit applications for landfills in which ash resulting from the incineration of municipal solid waste is disposed be extended until January 1, 1994, or until the effective date of rules adopted by the Department of Health and Consolidated Laboratories to regulate those facilities, whichever is earlier. The committee also recommends that the department adopt rules to establish classifications of solid waste and solid waste management facilities based upon waste type and quantity and to limit, restrict, or prohibit the disposal of solid waste based on environmental or public health rationale. These recommendations are contained in House Bill No. 1057, which is described under "PROBLEMS AND BENEFITS ASSOCIATED WITH WASTE MANAGEMENT STUDY."

## **GROUND POLLUTION AND ENCOURAGEMENT OF RECYCLING EFFORTS STUDY**

### **Background**

Solid waste management concerns have increased as a result of greater environmental awareness and stricter state and federal regulations with respect to municipal solid waste landfills. Environmental concerns such as the protection of surface and ground water supplies have made the siting of new landfills more difficult and the cost of waste disposal much

higher. House Concurrent Resolution No. 3027 directed a study of the feasibility and ramifications of reducing ground pollution of North Dakota landfills, with an emphasis on encouraging recycling efforts to preserve and protect our water.

#### **Testimony and Committee Considerations**

The committee received a report from the North Dakota Geological Survey which assessed levels of ground water contamination at six landfill sites. The report indicated that lower than expected levels of metals had leached into ground water supplies. Representatives of the Geological Survey and the State Water Commission also presented reports to the committee summarizing those agencies' uses of the funds appropriated to the agencies from the solid waste management fund. Representatives of both agencies testified that the budget requests for the agencies will include requests for similar appropriations from the fund to continue the studies in the next biennium.

Representatives from the recycling industry testified that state-mandated recycling is not a solution to solid waste problems. Because of the low population of the state and the relatively small wastestream, mandatory recycling programs and beverage container deposit legislation are not economically feasible. State incentives were suggested as a means to encourage recycling and the recycling industry.

Representatives of the recycling industry testified that the Tax Commissioner interpreted the sales tax exemption for manufacturing machinery and equipment under NDCC Section 57-39.2-04.3 to not include recycling equipment. The committee considered a bill draft that provided a sales tax exemption for recycling machinery and equipment used in a new recycling

facility or in a physical or economic expansion of an existing recycling facility. Committee members determined that a sales tax exemption would assist recyclers in the purchase of expensive recycling equipment and would encourage investment in the recycling industry. If the exemption had been in effect during the current biennium, two businesses may have qualified for an exemption of \$10,000 to \$20,000.

The committee considered a bill draft that would have provided for the establishment of recycling assistance financial incentive programs and a recycling assistance study by the Department of Economic Development and Finance. The bill draft also would have established a recycling assistance fee, allowed for the reduction of interest on loans for recycling facilities, and provided an income tax credit for any business purchasing recycled products.

Proponents of the bill draft testified that the state should provide incentives to private industry to encourage recycling programs. Because the state's wastestream is small and markets for many recyclable materials are not readily available, recycling of materials such as paper, plastic, and glass is not economically feasible in the state. After discussion regarding the bill draft, the requester of the bill draft asked that the bill draft be withdrawn from consideration so that he could further refine some of the proposals in the bill draft.

#### **Recommendation**

The committee recommends Senate Bill No. 2051 to provide a sales tax exemption for recycling equipment used in a new recycling facility or in a physical or economic expansion of an existing recycling facility.

# STUDY RESOLUTIONS AND ASSIGNMENTS FOR THE 1991-92 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Council for study during the 1991-92 interim under authority of North Dakota Century Code (NDCC) Section 54-35-03. The table also identifies statutory and other responsibilities assigned to interim committees and identifies the interim committee assigned the study or responsibility.

| <b>Bill or<br/>Resolution<br/>No.</b> | <b>Subject Matter (Committee)</b>  | <b>Bill or<br/>Resolution<br/>No.</b> | <b>Subject Matter (Committee)</b>  |
|---------------------------------------|--|---------------------------------------|--|
| 1031                                  | Receive report on the medical assistance property cost reimbursement system for the nursing home industry in North Dakota (Budget Committee on Long-Term Care)   | 3001                                  | Monitor the continued development of a continuum of services for the mentally ill and chemically dependent including expanded community services and related changes in the role of the State Hospital (Budget Committee on Government Services)   |
| 1167, §7                              | Study the feasibility and desirability of requiring vehicles used by the Board of Higher Education and institutions under its jurisdiction to be under the control of the central vehicle management system (Budget Committee on Government Administration)  | 3002                                  | Study the implementation of federal Family Support and Medicare Catastrophic Coverage Acts of 1988, as amended, to determine the financial impact of the Acts during the 1993-95 biennium and to review the effectiveness of changes to the system of delivering public assistance to North Dakota families and individuals (Budget Committee on Human Services)   |
| 2002, §24                             | Study the impact of various child support guideline models on family units, on the quality of the relationships among persons in the families affected by the guidelines, and on children who receive child support (Administrative Rules Committee)   | 3010                                  | Study the need for and feasibility of adopting and implementing a state health policy for the purpose of providing basic medical and health care to all citizens of the state (Health Care Committee)  |
| 2058, §49                             | Study collocation of the Bank of North Dakota and the Department of Economic Development and Finance and make recommendations relating to methods for accomplishing the collocation, including the time frame, funding, and other elements pertinent to the collocation (Industry, Business and Labor Committee) | 3022                                  | Study the effects of compliance with the federal Safe Drinking Water Act on North Dakota and its communities (Natural Resources Committee)   |
| 2090                                  | Study the effects of various methods of solid waste disposal and of solid waste disposal facilities (Waste Management Committee)   | 3026                                  | Study and develop a legislative reapportionment plan or plans (HB 1611, §2 - intent that plans of 49-53 senatorial districts be considered) (Legislative Redistricting and Elections Committee)  |
| 2206, §76                             | Study the feasibility and desirability of consolidating the Workers Compensation Bureau with Job Service North Dakota and the amount required to be appropriated from the general fund to implement any consolidation (Industry, Business and Labor Committee)   | 3027                                  | Study the current conditions and the feasibility of reducing ground pollution in North Dakota's landfills (Waste Management Committee)   |
| 2597, §5                              | Study and develop a plan for subdistricts for the House of Representatives (Legislative Redistricting and Elections Committee)   | 3039                                  | Study all aspects of special education (Special Education Committee)   |
|                                       |  | 3041                                  | Study recycling and the use of recycled materials by state agencies and institutions (Waste Management Committee)  |
|                                       |  | 3042                                  | Study the problems associated with solid waste management, including the operation and effect of legislation relating to solid waste management, whether the Department of Health and Consolidated Laboratories is the appropriate state agency for solid waste management responsibilities, and the effect of establishing district and state solid waste management plans (Waste Management Committee) |



| <b>Bill or Resolution No.</b> | <b>Subject Matter (Committee)</b>  |
|-------------------------------|--|
| 3043                          | Study the methods and manner in which tax-exempt entities acquire and hold real property, the effect of such acquisition and ownership on local tax bases, and the feasibility and desirability of limiting such acquisition, eliminating or limiting such tax exemptions, or requiring divestiture of such property, and to study funding sources for the wetland tax exemption program (Finance and Taxation Committee)                            |
| 3046                          | Study the problems associated with unification of the state's judicial system into a one-level trial system (Court Services Committee)   |
| 3054                          | Study the current and future role of the North Dakota early childhood tracking system (Special Education Committee)  |
| 3061                          | Study of the entire range of issues arising from the current methods and philosophy governing state employees' compensation (Budget Committee on Government Administration)  |
| 3065                          | Study privatization of and contracting for services by the Department of Human Services to provide services that the department is obligated to provide (Budget Committee on Government Services)  |
| 3067                          | Study charitable gaming laws and rules (Judiciary Committee)   |
| 3068                          | Study the feasibility of implementing an educational funding formula based on current costs that considers using all sources of revenue and wealth to measure a school district's local ability to support education, incorporating sparsity of enrollment, requiring a minimum level of local effort, and providing additional funding for categories of students that are below statewide averages of per-pupil expenditures (Education Committee) |
| 4001                          | Study North Dakota election laws, including the laws relating to the financing of election campaigns and the reporting of election campaign expenditures (Legislative Redistricting and Elections Committee)   |
| 4002                          | Study the feasibility and ramifications of adopting and implementing a state-subsidized health insurance program for uninsured and underinsured residents (Health Care Committee)  |

| <b>Bill or Resolution No.</b> | <b>Subject Matter (Committee)</b>   |
|-------------------------------|---|
| 4003                          | Study the feasibility and desirability of the privatization of some state government services (Budget Committee on Government Services)   |
| 4005                          | Study the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement (Employee Benefits Programs Committee)  |
| 4029                          | Study the Americans with Disabilities Act and its expected impact on state and local governments (Budget Committee on Human Services)   |
| 4034                          | Study the financial support for mandated special education programs and the method by which the Department of Public Instruction distributes the state grant program funds (Special Education Committee)  |
| 4036                          | Study the structure, organization or consolidation with Job Service North Dakota, and administration of the Workers Compensation Bureau, including the qualifications of the bureau's claims analysts and rehabilitation staff (Industry, Business and Labor Committee) |
| 4037                          | Study all aspects of state aid to local fire departments and districts (Finance and Taxation Committee)   |
| 4038                          | Investigate and recommend a program or programs for funding and financing water resource development throughout the state (Natural Resources Committee)   |
| 4039                          | Study the priority of water rights and North Dakota's water permitting process (Natural Resources Committee)  |
| 4043                          | Review and monitor the implementation of legislation establishing a single trial court of general jurisdiction (HB 1517, §206 - intent that study include detailed analysis of fiscal implications of unification) (Court Services Committee)                           |
| 4046                          | Study the feasibility and desirability of adopting an integrated pest management law (Natural Resources Committee)  |
| 4047                          | Study the availability of capital to North Dakota hospitals and the role of the Bank of North Dakota in assuring that capital is available at the lowest possible cost (Health Care Committee)  |

| <b>Bill or Resolution No.</b> | <b>Subject Matter (Committee)</b>  | <b>NDCC Citation</b> | <b>Subject Matter (Committee)</b>   |
|-------------------------------|--|----------------------|---|
| 4050                          | Study the distribution of child support enforcement incentive payments made by the federal government (Budget Committee on Human Services)   | 4-02.1-18            | Receive annual audit report from State Fair Association (Legislative Audit and Fiscal Review Committee)   |
| 4051                          | Study the feasibility of providing basic statewide health and work-related accident insurance to all North Dakota workers and their dependents (Industry, Business and Labor Committee)  | 4-19-01.2            | Approve use of moneys deposited in State Forester reserve account (Budget Section)  |
|                               |  | 10-23-03.2           | Receive annual audit report from corporation receiving ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)   |
| 4052                          | Study North Dakota family foster home fire and safety codes (Special Education Committee)  |                      |   |
| 4053                          | Study the feasibility and desirability of the Department of Human Services contracting with the private sector for the treatment of alcohol and drug dependent persons (Budget Committee on Government Services)                                   | 15-10-12.1           | Approve any gift of a higher education facility (Budget Section)  |
|                               |  | 15-10-18             | Approve nonresident student tuition fees (Budget Section)   |
| 4055                          | Study state institution and agency pay practices (Budget Committee on Government Administration)   | 20.1-02-05.1         | Approve comprehensive statewide land acquisition plan established by director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding \$10,000 by Game and Fish Department (Budget Section) |
| 4057                          | Study the feasibility and desirability of establishing a basic care program (Budget Committee on Long-Term Care)   |                      |   |
| 4061                          | Study the investigation, prosecution, and treatment of offenders in child sexual abuse cases (Judiciary Committee)   | 25-04-17             | Receive report on writeoff of patients' accounts at Developmental Center at Grafton (Legislative Audit and Fiscal Review Committee)   |
| 4065                          | Study additional programs that could be implemented by the State Hospital and alternative uses for the facilities of the State Hospital (Budget Committee on Government Services)  | 28-32-02             | Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)   |
|                               |  | 28-32-02             | Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)   |
| 4066                          | Study the human services system - by Legislative Council directive, limited to state level administration of human services system (Budget Committee on Human Services)  | 28-32-15             | Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)   |
| 4067                          | Study workers' compensation, insurance, and contract issues that may arise when an employer or insurer requires subrogation, additional insured coverage, or indemnification of an employee or contractor (Industry, Business and Labor Committee) | 46-02-04             | Determine contents of contracts for printing of legislative bills, resolutions, and journals (Legislative Management Committee)   |
| 4075                          | Investigate and recommend a program for funding and financing a comprehensive statewide water development program (Natural Resources Committee)  | 50-06-05.1           | Approve termination of federal food stamp or energy assistance program (Budget Section)   |
|                               |  | 50-06.3-08           | Receive annual report from Department of Human Services on writeoff of recipients' or patients' accounts (Legislative Audit and Fiscal Review Committee)  |

| <b>NDCC Citation</b> | <b>Subject Matter (Committee)</b>  |
|----------------------|--|
| 54-10-01             | Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)  |
| 54-10-01             | Determine necessary performance audits by State Auditor (Legislative Audit and Fiscal Review Committee)  |
| 54-14-01.1           | Periodically review actions of the Office of the Budget (Budget Section)   |
| 54-14-03.1           | Receive reports on fiscal irregularities (Budget Section)  |
| 54-16-01             | Approve excess transfers from state contingency fund (Budget Section)  |
| 54-27-22             | Approve use of capital improvements planning revolving fund (Budget Section)   |
| 54-27-23             | Approve use of cash flow financing (Budget Section)  |
| 54-27.2-03           | Receive report on transfers of funds from the budget stabilization fund to the state general fund to offset projected decrease in general fund revenues (Budget Section)                   |
| 54-34.3-03           | Approve establishment of additional divisions of the Department of Economic Development and Finance as determined by the director to be necessary (Budget Section)                         |
| 54-34.3-04           | Receive annual reports from the Department of Economic Development and Finance on loan performance and performance of the department (Budget Section)                                      |
| 54-35-02             | Review uniform laws recommended by Commission on Uniform State Laws (Judiciary Committee)  |
| 54-35-02             | Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Management Committee)  |
| 54-35-02             | Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents (Legislative Management Committee) |
| 54-35-02.2           | Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)  |

| <b>NDCC Citation</b> | <b>Subject Matter (Committee)</b>   |
|----------------------|---|
| 54-35-02.4           | Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans (Employee Benefits Programs Committee) |
| 54-35-02.6           | Study and review rules of administrative agencies (Administrative Rules Committee)  |
| 54-35-02.7           | Overview the Garrison Diversion Project and related matters (Garrison Diversion Overview Committee)   |
| 54-35-11             | Make arrangements for 1991 session (Legislative Management Committee)   |
| 54-35.2-02.1         | Receive annual report from the Advisory Commission on Intergovernmental Relations on planning grants administered by the commission (Budget Section)                |
| 54-44.1-07           | Prescribe form of budget data information prepared by the director of the budget (Budget Section)   |
| 54-44.1-13.1         | Approve reduction of budgets due to initiative or referendum action (Budget Section)  |
| 57-01-11.1           | Receive requested reports on auditing enhancement program and settlement of tax assessments (Budget Section)  |
| 65-02-08             | Approve fee schedules for medical and hospital services proposed for adoption by the Workers Compensation Bureau (Administrative Rules Committee)                   |
| <b>1985</b>          |   |
| <b>Session Laws</b>  |   |
| <b>Citation</b>      | <b>Subject Matter (Committee)</b>   |
| Chapter 77           | Administer legislative wing improvements appropriation (Legislative Management Committee)   |
| <b>1987</b>          |   |
| <b>Session Laws</b>  |   |
| <b>Citation</b>      | <b>Subject Matter (Committee)</b>   |
| Chapter 29           | Administer legislative wing improvements appropriation (Legislative Management Committee)   |
| <b>1989</b>          |   |
| <b>Session Laws</b>  |   |
| <b>Citation</b>      | <b>Subject Matter (Committee)</b>   |
| Chapter 25           | Administer legislative wing and Capitol grounds improvements appropriation (Legislative Management Committee)   |

Chapter 34 Receive 1991 report filed by Land Reclamation Research Center (Natural Resources Committee)

Chapter 63 Approve expansion of Oxford House (Budget Section)

Chapter 659 Receive reports on implementation of the state's pay equity policy (Budget Committee on Government Administration)

**1991  
Session Laws  
Citation Subject Matter (Committee)**

Chapter 5 Receive 1991 and 1992 reports filed by Land Reclamation Research Center (Natural Resources Committee)

Chapter 16 Authorize Director of the Department of Transportation to transfer appropriation authority within the appropriation to the department (Budget Section)

Chapter 16 Approve appropriation of special funds derived from federal funds or other income to the Department of Transportation (Budget Section)

Chapter 19 Approve lease purchase agreement entered by Board of Higher Education for purpose of acquiring title to Hastings Hall on the North Dakota State University campus from the State Seed Department (Budget Section)

Chapter 21 Authorize the Director of the Department of Corrections and Rehabilitation to transfer appropriation authority within the appropriation to the department (Budget Section)

Chapter 23 Receive periodic reports from the Office of Management and Budget on its progress in determining necessary pay equity adjustments (Budget Committee on Government Administration)

Chapter 28 Receive report on deficiency appropriation to state bonding fund (Budget Section)

Chapter 28 Receive report by State Auditor on performance reviews of divisions or programs of the Department of Human Services (Budget Committees on Government Services and Human Services)

Chapter 29 Authorize the Director of the Department of Human Services to transfer appropriation authority within the appropriation to the department (Budget Section)

**1991  
Session Laws  
Citation Subject Matter (Committee)**

Chapter 29 Receive report from Department of Human Services on amount of prospective deficiency appropriation if federal financial participation funds are less than estimated for 1991-93 biennium (Budget Section)

Chapter 29 Receive report from Department of Human Services on amount of deficiency appropriation to be requested if general fund appropriations are insufficient to comply with federal mandates during 1991-93 biennium (Budget Section)

Chapter 29 Receive report from Department of Human Services on any anticipated general fund deficiencies due to projected deficiencies in State Hospital income or Medicaid grant funding and approve continued spending at a level that would require a deficiency appropriation by the next Legislative Assembly (Budget Section)

Chapter 31 Authorize the Director of the Office of Management and Budget to transfer appropriation authority within the appropriation to the department (Budget Section)

Chapter 34 Receive report from Adjutant General on funds received and spent for the Veterans' Cemetery (Budget Section)

Chapter 47 Receive report from Public Employees Retirement Board on status of the group insurance plan's reserve fund (Budget Section)

Chapter 95 Approve substitution of alternative positions for authorized positions by the Department of Economic Development and Finance to utilize its personnel in the most effective manner (Budget Section)

Chapter 319 Receive report from Commissioner of Insurance relating to basic health insurance coverage (Health Care Committee)

Chapter 404 Receive certified statement from any ethanol plant receiving production incentives from the state as to whether the plant produced a profit from its operation in the preceding fiscal year (Budget Section)

| 1991<br>Session Laws |   |
|----------------------|---|
| Citation             | Subject Matter (Committee)  |
| Chapter 517          | Receive progress reports and findings of Department of Human Services concerning its study of the medical assistance property cost reimbursement system for the nursing home industry in the state (Budget Committee on Long-Term Care) |
| Chapter 584          | Receive report from the Office of Management and Budget on receipt and expenditure of funds approved for expenditure by the Emergency Commission between legislative sessions (Budget Section)  |
| Chapter 597          | Receive report on transfer of funds from the budget stabilization fund to the general fund to offset a negative balance in the state general fund (Budget Section)  |
| Chapter 822          | Hold legislative hearings on block grants (Budget Section)  |

#### Added Committee Responsibilities

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees. The table lists the subject matter and the interim committee to which it was referred:

| Responsibility  | Interim Committee                             |
|---|---|
| Monitor status of state agency and institution appropriations   | Budget Committee on Government Administration |
| Study provision of day care services by state agencies and institutions   | Budget Committee on Government Services       |
| Review and report on budget data prepared by the director of the budget   | Budget Section                                |
| Review space needs of the Southeast Human Service Center  | Human Services Facilities Advisory Committee  |
| Statutory and constitutional revision   | Judiciary Committee                           |
| Study the investigation, prosecution, and treatment of sexual offenders of developmentally disabled persons - Legislative Council directive | Judiciary Committee                           |
| Review legislative rules  | Legislative Management Committee              |

#### STUDY RESOLUTIONS NOT PRIORITIZED

The following table lists the resolutions not prioritized by the Legislative Council for study during the 1991-92 interim under authority of NDCC Section 54-35-03. The subject matter of many of these resolutions is the same or similar to the subject matter of resolutions that were given priority or of study assignments to specific committees.

| Bill or Resolution No. | Subject Matter   |
|------------------------|--|
| 1002, §6               | Study the feasibility and desirability of including all county judges in the Public Employees Retirement System  |
| 3006                   | Study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1993 and 1995   |
| 3013                   | Study methods of funding higher education  |
| 3015                   | Study the feasibility of improving the efficiency of political subdivision government structure and services   |
| 3017                   | Study employment opportunities for older workers, including barriers, benefit and retirement program options, and workplace education and training, so that older workers can maintain their economic security   |
| 3019                   | Study the impact of state mandates on political subdivisions and develop a procedure for the funding of new programs, services, or functions that the Legislative Assembly mandates on political subdivisions  |
| 3020                   | Study North Dakota laws relating to the joint exercise of governmental powers by political subdivisions to determine whether those laws unnecessarily inhibit the broad authority conferred by the state constitution for joint powers agreements among political subdivisions |
| 3023                   | Study the feasibility and desirability of various methods for redesigning the administration of education in North Dakota  |
| 3031                   | Study the impact and potential benefits to be derived from the use of electronic communications in government services   |
| 3032                   | Study the problems caused by and associated with severed mineral interests   |
| 3040                   | Study the feasibility of having governmental entities conduct meetings through the use of telecommunications systems   |
| 3045                   | Study water quality, with emphasis on the testing for nitrates in ground water   |
| 3047                   | Study levy limitations for political subdivisions  |

| <b>Bill or Resolution No.</b> | <b>Subject Matter</b>   | <b>Bill or Resolution No.</b> | <b>Subject Matter</b>  |
|-------------------------------|---|-------------------------------|--|
| 3049                          | Study the statutes and rules concerning the propagation of captive wildlife and exotic wildlife in North Dakota and the authority of the Game and Fish Commissioner and the Board of Animal Health to regulate this industry  | 4007                          | Study the feasibility of establishing programs for families and individuals receiving public assistance to permit them to develop skills that will lead to gainful employment  |
| 3050                          | Study laws governing licensing and regulation of various occupations and professions  | 4017                          | Study the operation and effect of North Dakota's no-fault insurance law in comparison with no-fault insurance laws in other states   |
| 3052                          | Study the feasibility and desirability of implementing a one-call excavation notice system  | 4019                          | Study methods for funding law enforcement training facilities and programs   |
| 3055                          | Study the enrollment of North Dakota students in public schools or institutions of bordering states   | 4031                          | Study the desirability and feasibility of establishing a public guardianship program for indigent persons  |
| 3056                          | Study the equity and advisability of the present method of issuance of gratis hunting permits   | 4032                          | Study the desirability and feasibility of enhancing and improving the ability of existing civil legal services programs to provide for the delivery of civil legal services to the poor and developing equal access to civil legal services for the poor |
| 3057                          | Study the feasibility and desirability of requiring a unified budget  | 4033                          | Study the cost containment effect of the certificate of need law   |
| 3058                          | Study the use of flexible curricula in North Dakota high schools and the team approach to course selections   | 4035                          | Study the provision and funding of adult literacy programs   |
| 3059                          | Study the introduction of nonnative fish species into this state and the interbasin transfer of water, fish species, and aquatic plant species between or among drainage basins located in this state   | 4040                          | Study the conduct of administrative hearings by state agencies   |
| 3060                          | Study the need for a long-term energy policy for North Dakota   | 4041                          | Study tax preferences under existing law, with emphasis on prevention of unfair competitive advantages to entities receiving tax preferences   |
| 3062                          | Study the feasibility of establishing a collection and disposal program for agricultural pesticides, hazardous household chemicals, and their containers  | 4042                          | Study law enforcement and regulatory activities in the state of North Dakota   |
| 3069                          | Study state transportation aid to school districts  | 4044                          | Study court cases and state law regarding claim and delivery, as well as attachment  |
| 3070                          | Study the feasibility and desirability of allowing state agencies to retain and expend a portion of unexpended general fund appropriations beyond the end of the biennium for which the funds were appropriated and the possibility of a bonus system in lieu of sick leave use | 4045                          | Study the feasibility and desirability of consolidating all building and construction code administration responsibilities under one authority   |
| 4004                          | Study, analyze, and evaluate, with assistance of a consultant, public policy as determined by the Legislative Assembly and its relationship to the state's ability to enhance economic development  | 4048                          | Study means of providing incentives for individuals to obtain long-term care insurance   |
|                               |   | 4049                          | Study investment of funds under the control of the State Investment Board  |
|                               |   | 4056                          | Study problems relating to the sale of agricultural commodities  |

# 1993 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

## HOUSE

**House Bill No. 1021 - Child Support Guidelines.** This bill establishes child support guidelines that incorporate a modified income shares model. (Administrative Rules Committee)

**House Bill No. 1022 - State Employee Job Skills Enhancement and Career Development.** This bill appropriates \$50,000 to the Office of Management and Budget to provide state employees opportunities for job skills enhancement, access to new technologies, and career development programs. (Budget Committee on Government Administration)

**House Bill No. 1023 - Fuel Price and Oil and Gas Tax Revenue Risk Management Programs.** This bill provides that the Office of Management and Budget may contract for fuel price risk management on behalf of a state agency or institution that purchases fuel. The bill also provides that the State Investment Board upon request of the Office of Management and Budget and approval by the Budget Section can contract for oil and gas tax revenue risk management. (Budget Committee on Government Administration)

**House Bill No. 1024 - Treatment Services for DWI Offenders.** This bill removes the restriction that court-ordered treatment services for driving while intoxicated offenders be only to inpatient facilities and allows treatment at any licensed addiction treatment program. (Budget Committee on Government Services)

**House Bill No. 1025 - Developmental Center at Grafton Services.** This bill permits the Developmental Center at Grafton to sell services, including utility and laundry services, subject to Budget Section approval based on the determination that the service is not otherwise being provided by either the private or public sector. (Budget Committee on Government Services)

**House Bill No. 1026 - State Agency Privatization Reports.** This bill requires a state agency to report to the Appropriations Committees action taken by the agency to provide public services through contracts with the private sector and any recommendations for future contracting with the private sector to provide public services. When new positions or programs are requested by an agency, the agency must also report the consideration given privatization in arriving at the request. (Budget Committee on Government Services)

**House Bill No. 1027 - Americans with Disabilities Act Accessibility Standards.** This bill makes statutory changes for compatibility with the Americans with Disabilities Act, including requiring buildings subject to the Act to conform to the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities. (Budget Committee on Human Services)

**House Bill No. 1028 - Communications-Impaired Telecommunication Services - Excise Tax.** This bill establishes a program to provide

specialized telecommunication services and equipment to the communications impaired and provides for a telephone excise tax to fund the program. (Budget Committee on Human Services)

**House Bill No. 1029 - Special Needs Supplemental Payment Program.** This bill establishes a program to provide a special needs supplement of up to \$50 per month for the private purchase of house-keeping services by individuals determined in need of the services. The bill provides an appropriation of \$716,704 from the general fund. (Budget Committee on Long-Term Care)

**House Bill No. 1030 - Expanded Service Payments to the Elderly and Disabled and Basic Care Payment Programs.** This bill expands the service payments to the elderly and disabled program to provide in-home services as an alternative to persons meeting criteria for basic care and also establishes a state basic care assistance program providing state funding and administration of the program with counties conducting related functional assessments. This bill provides an appropriation of \$6,853,795 from the general fund—\$5,238,774 for the basic care program and \$1,615,021 for the expanded service payments to the elderly and disabled. (Budget Committee on Long-Term Care)

**House Bill No. 1031 - Basic Care Facilities.** This bill allows a basic care facility to provide medication administration services and to admit and retain only individuals for whom the facility provides appropriate services to meet the individual's needs. (Budget Committee on Long-Term Care)

**House Bill No. 1032 - Nursing Home Property Cost Reimbursement.** This bill continues the reimbursement provisions of House Bill No. 1031 (1991), which are to expire on June 30, 1993, changing nursing home property cost reimbursement for certain facilities by requiring interest and depreciation to be reimbursed based on a facility's actual costs. In addition, the bill continues the Department of Human Services Advisory Committee's study of property cost reimbursement during the 1993-94 interim and requires the advisory committee to report to a committee of the Legislative Council regarding the advisory committee's findings. (Budget Committee on Long-Term Care)

**House Bill No. 1033 - School Building Fund Moneys Disposition.** This bill provides that any unobligated moneys in a school building fund may be considered cash on hand for budgeting purposes during the ensuing year. (Education Committee)

**House Bill No. 1034 - School Building Fund Use for Certain Insurance Premiums.** This bill allows school districts to use moneys in a school building fund to pay insurance premiums for building insurance. (Education Committee)

**House Bill No. 1035 - State Retirement and Investment Office.** This bill extends the establishment of the State Retirement and Investment Office

for a period of two years, until June 30, 1995. (Employee Benefits Programs Committee)

**House Bill No. 1036 - Insurance Premium Tax Allocation to Fire Districts.** This bill removes the cap on property and casualty insurance premium tax revenues deposited in the insurance tax distribution fund. The bill eliminates bonus payments to fire districts and provides that the distribution amount to each district will match the rate of tax collected in that district. (Finance and Taxation Committee)

**House Bill No. 1037 - Property and Casualty Insurance Application Contents.** This bill requires insurance companies to report on property and casualty insurance applications the fire protection district in which insured property is located. The bill provides an appropriation of \$10,000 to the State Fire Marshal for preparation of maps to be used by insurance companies in complying with the reporting requirements. (Finance and Taxation Committee)

**House Bill No. 1038 - North Dakota Health Task Force Duties.** This bill requires the North Dakota Health Task Force organized under the North Dakota Health Council to develop a prospective all payers ratesetting system or other health care financing system and to develop mechanisms to provide health coverage for all state residents. (Health Care Committee)

**House Bill No. 1039 - Workers Compensation and Job Service North Dakota Consolidation Repealed.** This bill repeals the provisions of 1991 Session Laws Chapter 714 which required the consolidation of the Workers Compensation Bureau with Job Service North Dakota. The bill contains an emergency clause. (Industry, Business and Labor Committee)

**House Bill No. 1040 - Workers Compensation Bureau and Job Service North Dakota Under Commissioner of Labor.** This bill repeals the consolidation of the Workers Compensation Bureau with Job Service North Dakota and requires that the Workers Compensation Bureau and Job Service North Dakota be established as divisions under the Commissioner of Labor. The bill provides that the Commissioner of Labor be appointed by the Governor rather than elected. The bill contains an emergency clause and an effective date of July 1, 1993. (Industry, Business and Labor Committee)

**House Bill No. 1041 - Uniform Commercial Code Article 6 - Bulk Transfers.** This bill repeals Uniform Commercial Code Article 6 - Bulk Transfers. (Judiciary Committee)

**House Bill No. 1042 - Uniform Commercial Code Article 3 - Negotiable Instruments.** This bill amends Uniform Commercial Code Article 3 - Bulk Transfers to address situations when a cashier's check, teller's check, or certified check is lost, destroyed, or stolen. (Judiciary Committee)

**House Bill No. 1043 - Uniform Transfers to Minors Act.** This bill amends the Uniform Transfers to Minors Act to allow brokerage accounts to be used to set up custodianships for minors. (Judiciary Committee)

**House Bill No. 1044 - Firearm Probation Requirements.** This bill requires a court to provide as a condition of probation that the defendant be prohibited from possessing a firearm or destructive device

while on probation. (Judiciary Committee)

**House Bill No. 1045 - Technical Corrections Act.** This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the code. (Judiciary Committee)

**House Bill No. 1046 - Transfer of Boiler Inspection Division from the Workers Compensation Bureau to the Insurance Commissioner's Office.** This bill provides that the Boiler Inspection Division duties be transferred from the Workers Compensation Bureau to the Insurance Commissioner as manager of the Fire and Tornado Fund. (Legislative Audit and Fiscal Review Committee)

**House Bill No. 1047 - Transfer of the Crime Victims Reparations Program from the Workers Compensation Bureau to the Department of Corrections and Rehabilitation.** This bill provides that the Crime Victims Reparations Program be administered by the Parole and Probation Division of the Department of Corrections and Rehabilitation rather than the Workers Compensation Bureau. (Legislative Audit and Fiscal Review Committee)

**House Bill No. 1048 - Legislative Audit and Fiscal Review Committee Membership.** This bill removes the Lieutenant Governor from membership on the Legislative Audit and Fiscal Review Committee and Budget Section. (Legislative Audit and Fiscal Review Committee)

**House Bill No. 1049 - Journal Entry Rule.** This bill provides that a bill or resolution passed by the Senate and House of Representatives as evidenced by the journals of the Senate and House is presumed to be the bill or resolution signed by the presiding officers, presented to the Governor, and filed with the Secretary of State. The publisher of the code is to publish the law as evidenced by the journals and the law as published must be presumed valid until determined otherwise by an appropriate court. (Legislative Management Committee)

**House Bill No. 1050 - House Subdistricts.** This bill establishes House subdistricts within each Senate district, except in Districts 18, 19, 38, and 40, which are the districts that contain portions of the Air Force bases. The bill contains an effective date of January 1, 1996. (Legislative Redistricting and Elections Committee)

**House Bill No. 1051 - Signature Requirements for Nomination Petitions.** This bill provides that the number of signatures necessary for a candidate for legislative office to place that candidate's name on the primary election ballot is equal to at least one percent of the total resident population of the legislative district and the number of signatures required for a candidate to place that candidate's name on the general election ballot as an independent candidate is equal to at least two percent of the resident population of the district. (Legislative Redistricting and Elections Committee)

**House Bill No. 1052 - Leftover Campaign Contributions.** This bill provides that a person who ceases to be a candidate may return a contribution to the contributor or use unexpended contributions as a contribution to any candidate or political party or as a donation to any charitable or educational organization. (Legislative Redistricting and Elections Committee)



**House Bill No. 1053 - Water Permit Application.** This bill requires a person applying for a water permit to notify all persons holding water permits for the appropriation of water from sites located within a radius of one mile from the location of the proposed water appropriation site and all municipal or public use water facilities in the county in which the proposed water appropriation site is located. (Natural Resources Committee)

**House Bill No. 1054 - County Weed Board Authority.** This bill allows county weed boards to control pests as well as weeds. (Natural Resources Committee)

**House Bill No. 1055 - Notification of School Districts Regarding Out-of-District Placements or Admissions.** This bill provides that a child's school district of residence and the admitting district must be notified by a placement agency of the need for an out-of-district placement or admission, and that the school district of residence must be afforded an opportunity to participate in any process involving decisions about the child's placement. (Special Education Committee)

**House Bill No. 1056 - Age of Enrollment.** This bill allows a child who has not turned five by August 31 of the year of enrollment to demonstrate through a series of tests readiness to enter kindergarten. It also allows a child who has not turned six by midnight on August 31 in the year of admission to demonstrate through a series of tests readiness to enter first grade. (Special Education Committee)

**House Bill No. 1057 - Comprehensive Solid Waste Management.** This bill provides for notice of an application for a solid waste management facility permit; a hearing by the solid waste management district board of the district in which the facility is to be located; a representative of each city in the district which has a population of more than 10,000 to be on a solid waste management district board; and inspection of municipal waste management facilities within the district. The bill also extends the moratorium on permit applications for landfills in which ash resulting from the incineration of municipal solid waste is disposed until January 1, 1994, or until the effective date of rules adopted by the Department of Health and Consolidated Laboratories to regulate those facilities, whichever is earlier. (Waste Management Committee)

**House Concurrent Resolution No. 3001 - North Dakota Health Task Force Support.** This resolution supports the efforts of the North Dakota Health Task Force in developing an all payers ratesetting system or other health care financing system and in developing mechanisms to provide health care for all citizens of the state. (Health Care Committee)

**House Concurrent Resolution No. 3002 - Four-**

**Year House Terms.** This resolution proposes a constitutional amendment to change the term of office of members of the House of Representatives from two years to four years. (Legislative Redistricting and Elections Committee)

**House Concurrent Resolution No. 3003 - Cooperation Regarding At-Risk Children.** This resolution encourages state agencies to work together and maximize available resources to assist young at-risk children and their families. (Special Education Committee)

**House Concurrent Resolution No. 3004 - Early Childhood Tracking System Study.** This resolution directs the Legislative Council to study the progress of the North Dakota early childhood tracking system, the need for further expansion of the program, and the continuation of funding through federal or other sources. (Special Education Committee)

**House Concurrent Resolution No. 3005 - Services to Special Needs Children Study.** This resolution directs the Legislative Council to study the delivery of services to special needs children from a multiagency perspective and to consider whether services might be enhanced and efficiencies might be improved through better cooperation or consolidation of administrative functions. (Special Education Committee)

**House Concurrent Resolution No. 3006 - Individualized Education Program Process Study.** This resolution directs the Legislative Council to study the implementation of an individualized education program process, not otherwise mandated by law, for any student currently enrolled in school. (Special Education Committee)

**House Concurrent Resolution No. 3007 - Adequate Preparation of Teachers.** This resolution urges the Board of Higher Education to include in the teacher preparation curriculum training designed to prepare new teachers for the challenges of educating the next generation and also encourages the board to work with the North Dakota Education Association and the Superintendent of Public Instruction to ensure that certificated teachers, through continuing education, enhance their academic and pedagogical skills for the same purpose. (Special Education Committee)

**House Concurrent Resolution No. 3008 - Legislative Council Study of Problems Associated With Solid Waste Management.** This resolution directs the Legislative Council to study the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans. (Waste Management Committee)

# SENATE

**Senate Bill No. 2023 - Administrative Agency Definition.** This bill amends North Dakota Century Code (NDCC) Section 28-32-01 to remove the exemptions from the definition of administrative agency. (Administrative Rules Committee)

**Senate Bill No. 2024 - Optional Property Tax Levy Increase Authority.** This bill allows political subdivisions to levy four percent more in dollars in a budget year than was levied in the base year, which is defined as the taxing district's taxable year with the highest amount of property taxes levied in dollars of the three taxable years immediately preceding the budget year. (Advisory Commission on Intergovernmental Relations)

**Senate Bill No. 2025 - Recruitment, Training, and Retention of State Employees.** This bill requires the director of the Central Personnel Division to develop a comprehensive plan for the recruitment, career development, and retention of state employees. The bill also provides a \$5,000 appropriation to the director for the costs of a task force consisting of members of the general public and representatives of state employees. (Budget Committee on Government Administration)

**Senate Bill No. 2026 - State Child Care Center Space Lease.** This bill exempts leases of space for child care facilities at the State Hospital or Developmental Center at Grafton from the requirement that the leases must result in a net economic gain for the Department of Human Services. (Budget Committee on Government Services)

**Senate Bill No. 2027 - Child Care Services Provided by State Agencies.** This bill provides that state agencies or institutions may provide child care services to children of employees, students, clients, and if space is available, to any other children. An agency or institution may operate or contract for the child care services only in space available within the facility housing the agency or institution. (Budget Committee on Government Services)

**Senate Bill No. 2028 - Child Care Service Fee.** This bill establishes a child care service fee of up to \$25 on child care providers providing care to children whose families receive state child care assistance. The fee is imposed only when the Department of Human Services directly reimburses early childhood facilities under child care assistance programs and when early childhood facilities benefit from the programs. (Budget Committee on Government Services)

**Senate Bill No. 2029 - Child Care Assistance in Schools.** This bill requires the Superintendent of Public Instruction, Department of Human Services, and Department of Transportation to provide assistance to school districts developing or providing before and after school child care services. (Budget Committee on Government Services)

**Senate Bill No. 2030 - Child Care Licensing Requirements.** This bill requires that a licensed child care facility must maintain at all times during which child care services are provided at least one person who is trained and certified in cardiopulmonary resuscitation. (Budget Committee on Government Services)

**Senate Bill No. 2031 - Child Support Incen-**

**tive Payments.** This bill allocates one percent of the federal child support incentive payments received by the state to a child support incentives account for use as grants for child support related education and training for individuals involved in child support enforcement. (Budget Committee on Human Services)

**Senate Bill No. 2032 - District Court Judgeship Reduction Timetable.** This bill provides that the authority of the Supreme Court to abolish the office of district court judges under NDCC Section 27-05-02.1(2) may be exercised from July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than 42 rather than the 44 presently in the law. (Court Services Committee)

**Senate Bill No. 2033 - District Court Judge Chamber Location.** This bill provides that, effective January 2, 1995, not more than 70 percent of the chambers of the district judges may be located in cities with a population of more than 10,000. (Court Services Committee)

**Senate Bill No. 2034 - Interim District Court Judgeships.** This bill provides that the new judgeships established on January 2, 1995, under 1991 House Bill No. 1517, are interim district court judgeships with the same jurisdiction as district court judges except the interim district court judge does not have jurisdiction to hear or determine any case or proceeding relating to an offense classified as a Class AA felony. (Court Services Committee)

**Senate Bill No. 2035 - Foundation Aid Deficiency Appropriation - Temporary Sales Tax.** This bill provides an \$8 million deficiency appropriation to be used for the purpose of making foundation aid per-pupil payments for the period beginning January 1, 1993, and ending June 30, 1993, and imposes a one percent sales tax on all items currently taxed at five percent for the period required to raise \$8 million. (Education Committee)

**Senate Bill No. 2036 - Educational Support Per Pupil.** This bill provides that in determining the total amount of payments due a school district for per-pupil and transportation aid, the amount of per-pupil aid and transportation aid for which a school district is eligible must be added together and from that total there must be subtracted the product of 22 mills times the latest available net assessed and equalized valuation of property in the school district and the amount that the unobligated balance of a school district's interim fund on the preceding June 30 is in excess of the amount authorized by NDCC Section 57-15-27. (Education Committee)

**Senate Bill No. 2037 - Wildlife Habitat or Conservation Property Acquisition.** This bill prohibits any entity from acquiring agricultural land to be used for wildlife habitat or conservation purposes unless the entity meets certain conditions including full payments of taxes or payments in lieu of taxes and interest on property owned by that entity for all prior years and payments of taxes or payments in lieu of taxes equal to 100 percent of the taxes that were or would have been due against that property under local assessment and levies for the previous two taxable years. Noncompliance results in the entity

being denied the right to file instruments with the register of deeds. (Finance and Taxation Committee)

**Senate Bill No. 2038 - Health Plan for Children and Pregnant Women.** This bill establishes a program to provide health services to children through the age of 18 years and pregnant women. The bill provides an \$11 million appropriation to fund the program. (Health Care Committee)

**Senate Bill No. 2039 - Health Care Provider Self-Referrals.** This bill prohibits health care providers who have an investment interest in a person from referring a patient to that person for a designated health service. (Health Care Committee)

**Senate Bill No. 2040 - Statute of Limitations for Workers' Compensation Claims.** This bill amends the statute of limitations for workers' compensation claims to reflect that the statute of limitations would not begin to run until an injured employee knew and was informed by the employee's treating health care provider that the employee's work activities were a substantial contributing factor in the development of a work-related injury or disease. (Industry, Business and Labor Committee)

**Senate Bill No. 2041 - Guardian Ad Litem Payment.** This bill permits a guardian ad litem to be appointed for a developmentally disabled victim in a sex offense case. The bill also requires the Attorney General to pay the fees of all guardians ad litem appointed in sex offense cases. (Judiciary Committee)

**Senate Bill No. 2042 - Sex Offender Registration.** This bill consolidates the sex offender and crimes against children offender registration statutes. The bill also removes the confidentiality provision and provides that all statements, fingerprints, and photographs required to be submitted by an offender when registering are public records. (Judiciary Committee)

**Senate Bill No. 2043 - Consent Defense.** This bill creates the affirmative defense of consent in a sex offense case involving a victim with a mental disease or defect. The bill sets forth the procedures that must be followed or the consent of a sex offense victim may not be raised by the defendant if the victim suffers from a mental disease or defect. (Judiciary Committee)

**Senate Bill No. 2044 - Uniform Statutory Rule Against Perpetuities.** This bill amends the Uniform Statutory Rule Against Perpetuities and makes primarily stylistic and technical changes. (Judiciary Committee)

**Senate Bill No. 2045 - Uniform Rights of the Terminally Ill Act.** This bill amends the Uniform Rights of the Terminally Ill Act to permit an individual to allow another person to make life-sustaining treatment decisions for the individual. (Judiciary Committee)

**Senate Bill No. 2046 - Campaign Contribution Reports.** This bill changes the filing deadlines for campaign contribution reports by political committees to conform to deadlines established under federal law for federal candidates and political committees. In addition, the bill requires political committees to file a preelection statement, complete through the 20th day before the election, by 5:00 p.m. on the 12th day before any statewide election. If a

political committee receives any contribution or makes any disbursement in the amount of \$500 or more in the aggregate within 20 days before any statewide election, the political committee must file a supplemental statement with the Secretary of State within 48 hours after receiving the contribution or making the disbursement. (Legislative Redistricting and Elections Committee)

**Senate Bill No. 2047 - Campaign Contribution Statements.** This bill requires a candidate to report all contributions from political committees, all loans made to the candidate, all contributions exceeding \$100 in the aggregate for the calendar year, and the total value of all contributions received. The bill requires district committees of political parties to file campaign contribution statements and state political party committees to file contribution and expenditure statements. In addition, the bill requires political committees to file contribution statements listing all contributions received in excess of \$100. (Legislative Redistricting and Elections Committee)

**Senate Bill No. 2048 - Foster Care Parent Training and Home Inspection.** This bill requires each foster parent to undergo fire prevention training and to complete a self-declaration form before initial licensure and before each license renewal. The bill also authorizes the Department of Human Services to require, on a case-by-case basis, before or after licensure, a fire inspection, inspection of the heating system, the electrical system, and any other type of inspection that the department deems necessary to carry out its purposes. (Special Education Committee)

**Senate Bill No. 2049 - Comprehensive Solid Waste Management Committee.** This bill requires the Governor to appoint a committee to prepare a comprehensive solid waste management plan that assesses the ability of each state agency, department, and institution to reduce the amount of solid waste it generates and increase the amount of recycled products it uses by July 1, 1994. (Waste Management Committee)

**Senate Bill No. 2050 - Waste Management Facility Inspectors.** This bill requires the Department of Health and Consolidated Laboratories to employ at least one full-time inspector for each waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. The bill requires the department to assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste an annual fee to pay the salaries, wages, and expenses associated with employing an inspector for the facility. (Waste Management Committee)

**Senate Bill No. 2051 - Sales Tax Exemption for Recycling Machinery and Equipment.** This bill provides a sales tax exemption for recycling equipment used in a new recycling facility or in a physical or economic expansion of an existing recycling facility. (Waste Management Committee)

**Senate Concurrent Resolution No. 4001 - Recruitment, Training, and Retention of State Employees.** This resolution expresses legislative support for state employees, and urges each branch of

state government to give priority to the recruitment, training, and retention of valuable state employees. The resolution also urges each branch of state government to plan and budget for adequate training and career development for state employees. (Budget Committee on Government Administration)

**Senate Concurrent Resolution No. 4002 - Services for the Mentally Ill and Chemically Dependent.** This resolution directs the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent including changes in the role of the State Hospital, expanded community services, and the development of partnerships between the public and private sectors for providing alcohol and drug abuse treatment services. (Budget Committee on Government Services)

**Senate Concurrent Resolution No. 4003 - Total Quality Management.** This resolution encourages the Department of Human Services to continue the development of a total quality management initiative and directs the Legislative Council to monitor the department's progress in developing total quality management concepts. (Budget Committee on Human Services)

**Senate Concurrent Resolution No. 4004 - Department of Human Services Administrative Changes.** This resolution encourages the Department of Human Services to implement recommended changes to improve its administrative structure to provide quality and efficiency in the human service delivery system and to report to the Legislative Council on the progress in implementing the recommendations. (Budget Committee on Human Services)

**Senate Concurrent Resolution No. 4005 - Court Unification Study.** This resolution directs the Legislative Council to study any problems associated with court unification under 1991 House Bill No. 1517, including the funding of the court unification. (Court Services Committee)

**Senate Concurrent Resolution No. 4006 - Congress to Assure That Federal Government Becomes Responsible Landowner.** This resolution urges Congress to assure that the federal government assumes its fair share of the property tax burden on land under federal ownership. (Finance and Taxation Committee)

**Senate Concurrent Resolution No. 4007 - Staggered Senatorial Terms After Redistricting.** This resolution proposes a constitutional amendment to allow the Legislative Assembly to shorten the term of any senator before completion of the term or provide for the election of any senator for a term of two years when necessary to maintain staggered terms after redistricting of the Legislative Assembly. (Legislative Redistricting and Elections Committee)

**Senate Concurrent Resolution No. 4008 - Safe Drinking Water Act Enforcement.** This resolution urges Congress to moderate enforcement of the Safe Drinking Water Act. (Natural Resources Committee)

**Senate Concurrent Resolution No. 4009 - School Accreditation Standards to Include Performance-Based Services.** This resolution urges the Superintendent of Public Instruction to include the provision of performance-based services to children from kindergarten through grade 12 as a standard for the accreditation of public and private schools in this state. (Special Education Committee)