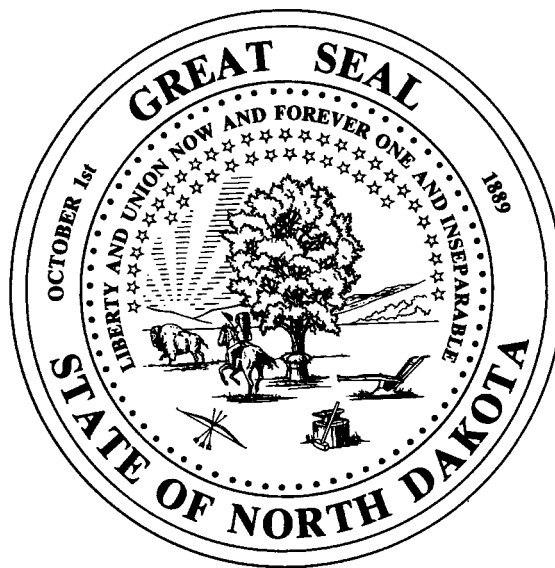


REPORT
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL

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



FIFTY-SEVENTH LEGISLATIVE ASSEMBLY
2001

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January 9, 2001

Honorable John Hoeven
Governor of North Dakota

Members, 57th Legislative
Assembly of North Dakota

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

Major recommendations include use of block grants to provide funds for the State Board of Higher Education for a base-funding appropriation and for an initiative-funding appropriation and an appropriation for asset funding for renewal and replacement of physical plant assets; recognition of the institutions under the control of the State Board of Higher Education as the North Dakota University System; creation of a department of commerce; creation of a North Dakota venture capital fund program; creation of an entrepreneur seed fund program; creation of a state employee telecommuting incentive program; a requirement that state agencies address the feasibility of telecommuting by selected employees in the agencies' information technology plans; a change in name of the School for the Blind to North Dakota Vision Services - School for the Blind; establishment of a grant preapproval process for certain state agencies; continuation of a major recodification of statutes relating to elementary and secondary education; establishment of a motor vehicle branch office pilot project using county treasurers; adoption of state academic content standards for schools; consolidation of statutes dealing with divorce and separation into one chapter of the North Dakota Century Code; establishment of a procedure for election board members and poll challengers to request identification from challenged voters in order to address voting eligibility concerns; and the establishment of a farmers equity trust fund for the acquisition of value-added agricultural projects and for loans for value-added agricultural projects.

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

Respectfully submitted,


Senator Gary J. Nelson
Chairman
North Dakota Legislative Council

HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

I. HISTORY OF THE LEGISLATIVE COUNCIL

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

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

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

II. THE NEED FOR A LEGISLATIVE SERVICE AGENCY

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

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

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

III. COMPOSITION OF THE COUNCIL

The Legislative Council by statute consists of 15 legislators, including the majority and minority

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

The Legislative Council is thus composed of eight majority party members and seven minority party members (depending upon which political party has a majority in the Senate), and is served by a staff of attorneys, accountants, researchers, and auxiliary personnel who are hired and who serve on a strictly nonpartisan basis. Legislation enacted in 1999 increases the size of the Council in 2001 to 17, with one additional member from the majority party in both the Senate and the House.

IV. FUNCTIONS AND METHODS OF OPERATION OF THE COUNCIL

Although the Legislative Council has the authority to initiate studies or other action deemed necessary between legislative sessions, much of the Council's work results from study resolutions passed by both houses. The usual procedure is for the Council to designate committees to carry out the studies, although a few Council committees, including the Administrative Rules Committee, the Employee Benefits Programs Committee, the Garrison Diversion Overview Committee, the Information Technology 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 reviews state agency rules and rulemaking procedures, legislative proposals affecting health and retirement programs for public employees, and information technology management of state agencies. 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 information technology research and staff services to the legislative branch, including legislative publishing and bill drafting capabilities. The Council makes arrangements for legislative sessions and controls the use of the legislative chambers and use of space in the legislative wing of the State Capitol. The Council also maintains a wide variety of materials and reference documents, many of which are not available from other sources.

V. MAJOR PAST PROJECTS OF THE COUNCIL

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

Government reorganization has also occupied a considerable amount of attention. Included have been studies of the delivery of human services, agriculturally related functions of state government, the creation of the Information Technology Department and the cabinet-level position of Chief Information Officer, and organization of the state's

charitable and penal institutions, as well as studies of the feasibility of consolidating functions in state government. Unification of the state's judicial system and the establishment of a public venture capital corporation were subjects of recent studies.

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

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

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

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

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SUMMARY

BRIEFLY - THIS REPORT SAYS

ADMINISTRATIVE RULES COMMITTEE

The Council reviewed all state administrative rule-making actions from November 1998 through November 2000. The Council voided rules of the Department of Human Services which would have imposed a 90 percent occupancy limitation for reimbursement of basic care facilities and required prior authorization by the Department of Human Services for coverage for partial hospitalization and certain categories of prescribed drugs. The Council considered voiding rules of the Superintendent of Public Instruction, Board of Animal Health, and Department of Human Services but withdrew that consideration in each case and agreed to amendments by the agencies in question. The Council considered voiding the rules of the State Board of Nursing, Highway Patrol, Milk Marketing Board, State Gaming Commission, and Board of Psychologist Examiners but withdrew that consideration in each case after receiving more information from the agency in question.

The Council recommends House Bill No. 1027 to require agencies to adopt a procedure to notify interested parties when agency rules will be considered by the Administrative Rules Committee. The Council recommends House Bill No. 1028 to require agencies to obtain Administrative Rules Committee approval of emergency status of rules that have been declared effective on an emergency basis. The Council recommends House Bill No. 1029 to require agencies to file comments received on rules with the Legislative Council when the rules are filed for publication. The Council recommends House Bill No. 1030 to revise the Administrative Agencies Practice Act to reorganize the provisions on administrative rulemaking without substantive change.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Advisory Commission on Intergovernmental Relations exercised its statutory authority to serve as a forum for the discussion of resolution of intergovernmental problems and to study issues relating to local governmental structure; fiscal and other powers and functions of local governments; relationships between and among local governments and the state or any other government; allocation of state and local resources; interstate issues involving local governments, including cooperation with appropriate authorities of other states; and statutory changes required to implement commission recommendations.

The Council recommends House Bill No. 1031 to consolidate park district mill levies for recreation, pest control, insurance, forestry, facilities, handicapped programming, and health insurance with the park district

general fund levy. The Council recommends House Bill No. 1032 to increase the Advisory Commission on Intergovernmental Relations membership from 11 members to 12 members by adding a representative of the North Dakota School Boards Association. The Council recommends Senate Bill No. 2024 to provide that cities and counties may use community health trust fund money to provide matching funds for city and county public employee tobacco education and cessation programs and to provide that the community health trust fund be augmented by returning community health trust fund interest to the community health trust fund and by depositing water development trust fund interest in the community health trust fund. The Council recommends Senate Concurrent Resolution No. 4001 to provide for a study of property tax exemptions for institutions of public charity that provide medical services and housing services. The Council recommends the commission chairman send a letter to interested parties, including the League of Cities, court administrator of the North Dakota Supreme Court, North Dakota Municipal Courts, and the Attorney General, encouraging improved communication between the parties regarding the collection of municipal court fines.

The commission received reports on the effects of disasters across the state and considered providing disaster relief to property taxpayers; received reports on the status of the Leadership Initiative for Community Strategic Planning; considered the issue of provision of state services at the local level; considered the issue of funding of maintenance of local roads; received a report regarding the United States Census 2000 and areas of possible state and local government interest; received a report regarding the history and status of revenue sharing and personal property tax replacement; and received a report on the status of taxing of e-commerce. The Council makes no recommendation concerning these issues.

AGRICULTURE COMMITTEE

The Council studied the extent of and remedies for damage caused to landowners from depredation by all game and nongame animals and damage caused to property by hunters. The Council recommends Senate Bill No. 2025 to prohibit the Game and Fish Department from discriminating against or penalizing a landowner in the deerproof hay yard program for entering a hunting for compensation agreement.

The Council studied grain credit-sale contracts to determine the need to provide protection for farmers against grain warehouse and grain buyer insolvency and studied agricultural marketing and the feasibility and desirability of forming a multistate agricultural marketing commission. The Council recommends House Bill

No. 1033 to remove the requirement of district court approval before the Attorney General investigates anti-trust violations; House Bill No. 1034 to appropriate \$500,000 for a revolving fund for the investigation of antitrust violations; and House Concurrent Resolution No. 3001 to provide for a consistent system of grain grading based upon point of origin grain grading.

The Council received a report from the State Board of Agricultural Research and Education on the board's annual evaluation of research activities and a report on the board's activities regarding development of market opportunities for biotechnologically enhanced crops.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Council studied the State Department of Health master plan for its facilities. The Council asked the department to explore the possibility of purchasing the former Heartview Foundation facility in Mandan from Southwest Key, Inc., and to identify other possible uses for any excess space within the facility and that the department's findings and recommendations be presented to the 57th Legislative Assembly.

The Council studied state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural areas. The Council recommends House Bill No. 1035 to establish a state employee telecommuting incentive program; Senate Bill No. 2026 to require information technology plans prepared by state agencies to address the feasibility of telecommuting by selected employees; and Senate Bill No. 2027 to provide for a motor vehicle branch office pilot project with county treasurers in three counties.

The Council studied privatizing and contracting for services provided by state agencies and studied the membership and management responsibilities of the Industrial Commission, the mission and location of each entity within and under the direction of the Industrial Commission, and the voting structure of the Industrial Commission. The Council makes no recommendation concerning either study.

The Council monitored agency compliance with legislative intent included in the 1999-2001 appropriations, reviewed the status of major state agency and institution appropriations, and received reports on oil tax revenues.

The Council received a report from the Department of Human Services on the hiring of full-time equivalent employee positions at the human service centers, State Hospital, and Developmental Center in addition to those authorized for the 1999-2001 biennium.

BUDGET COMMITTEE ON HEALTH CARE

The Council studied the State Department of Health plan for a community health grant program. The Council recommends that the 57th Legislative Assembly support

the department's plan for establishing Healthy Schools, Healthy Families, and Healthy Communities grant programs with moneys to be deposited in the community health trust fund and recommends that the 57th Legislative Assembly use a portion of the moneys accumulating in the community health trust fund during the 1999-2001 biennium for statewide tobacco counter-marketing programs and training and educational program materials for schools and communities to assist in the establishment and operation of tobacco use prevention and cessation programs. The Council recommends Senate Bill No. 2028 to provide that interest earned on moneys in the community health trust fund remain in the fund rather than be transferred to the general fund; and Senate Bill No. 2029 to provide that the interest earned on moneys in the water development trust fund be transferred to the community health trust fund rather than to the general fund.

The Council studied various challenges facing the delivery of health care in this state, including changes in hospital reimbursements, technological innovations, and the regionalization of services. The Council also studied health care access, quality and cost to determine essential health care services, critical providers, and access sites and to identify geographic, demographic, and economic issues relating to health care. The Council considered information relating to reimbursements for services provided by hospitals, home health care providers, and nurse practitioners; critical access hospitals; access to and utilization of health care services; health insurance availability and costs; and other health care-related issues. The Council requests that the Department of Human Services consider using ambulatory payment classifications in the development of a prospective payment system for outpatient Medicaid services.

The Council studied the possibility of creating an incentive package to assist rural nursing care facilities in closing, significantly reducing bed capacity, or providing alternative long-term care services. The Council recommends that moneys generated through the intergovernmental transfer program and deposited in the health care trust fund be used for projects and programs relating to the long-term care industry, including the funding of projects that provide alternatives to nursing facility services and projects that reduce nursing facility bed capacity. The Council requests that the Department of Human Services and the State Department of Health prepare a recommendation to the 57th Legislative Assembly describing the conversion of basic care and assisted living facilities into an integrated long-term housing and service delivery system.

The Council received reports from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program. The Council recommends House Bill No. 1036 to change the income review period from monthly to quarterly for determining Medicaid eligibility for children and pregnant women.

The Council received reports from the Department of Human Services and the State Board of Nursing regarding progress in preparing a joint recommendation relating to nurse licensure exemptions for the administration of medication. The Council recommends the 57th Legislative Assembly support the Department of Human Services and the State Board of Nursing recommendation, which provides for a permanent exemption from the Nurse Practices Act relating to the administration of medication by staff of certain facilities certified by the Department of Human Services.

BUDGET COMMITTEE ON HUMAN SERVICES

The Council monitored the Department of Human Services implementation of the recommended changes to improve the department's administrative structure and to enhance its budget presentation methods. The Council commends the department on that agency's development and implementation of a strategic planning process.

The Council studied the services provided by the Department of Human Services regional human service centers and received a report from the Department of Human Services regarding the department's review of program funding issues.

The Council studied the implementation of the temporary assistance for needy families (TANF) program and the operation of TANF in North Dakota as it relates to the relationship between the state and federally recognized Indian tribes in the state and received reports from the Department of Human Services regarding the progress of any negotiation with any tribal government to establish a pilot project for administration of a tribal family assistance grant. The Council recommends House Bill No. 1037 to exempt parents who are victims of domestic violence from the 60-month TANF benefit limit and from the TANF work activity requirements; and Senate Bill No. 2030 to appropriate \$150,000 from the general fund to the State Department of Health for state support of the sexual abstinence education grant program.

BUDGET COMMITTEE ON INSTITUTIONAL SERVICES

The Council studied the feasibility and desirability of collocating the Developmental Center and the State Hospital at one location and the feasibility and desirability of transferring additional buildings on the State Hospital grounds to the Department of Corrections and Rehabilitation. The Council recognized the cooperative and collaborative efforts of these two institutions during the 1999-2000 interim and the resulting cost-savings.

The Council studied the feasibility and desirability of consolidating under the School for the Blind all programs and services provided to children and adults who are

blind or visually impaired. The Council recommends House Bill No. 1038 to continue the current administrative structure of the School for the Blind and the Vocational Rehabilitation Division's vision services program; to provide that the School for the Blind is responsible for serving persons of all ages with visual impairments, not just children, and to change the name of the school to North Dakota Vision Services-School for the Blind.

The Council studied residential treatment centers and residential child care facilities, including occupancy rates, the number of out-of-state residents, and the need for additional facilities. The Council makes no recommendation concerning this study.

The Council received reports from the Department of Human Services concerning grants awarded or loans approved for alternative nursing facility programs; received reports from the Department of Human Services regarding the establishment of a traumatic brain-injured facility in western North Dakota; and received the final report from the Department of Human Services on the progress of the Alzheimer's and related dementia projects.

BUDGET SECTION

The Council received reports from the Office of Management and Budget on the status of the state general fund and tobacco settlement proceeds. The Council also received reports from the Office of Management and Budget regarding irregularities in the fiscal practices of the state and recommendations for use of moneys in the preliminary planning revolving fund.

The Council received reports from the State Water Commission on the implementation of the state water development program and water management plan and the issuance of bonds for various water projects.

The Council authorized the expenditure of additional other funds for capital projects at the University of North Dakota, Bismarck State College, Lake Region State College, and Minot State University. The Council received reports on local funds expenditures at the institutions of higher education for the 1997-99 biennium and flood damage to the University of North Dakota and North Dakota State University.

The Council received reports from the Department of Human Services on funding for traditional Medicaid grants; the intergovernmental transfer program; potential reductions to the Northeast Human Service Center 2001-03 biennium budget; computer changes to implement the Health Insurance Portability and Accountability Act; proposed reductions to the federal social service block grant; and additional full-time equivalent positions at the human service centers.

The Council approved the distribution of grants by the Children's Services Coordinating Committee; approved the agreement between the city of Grand Forks Office of Urban Development and tenants of the Corporate Center for the future sale of all or a portion of the Corporate

Center; and received a report on federal funds received by state agencies.

The Council recommends Senate Bill No. 2031 to implement a grant preapproval process for state agencies except the institutions of higher education; and Senate Concurrent Resolution No. 4002 to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds.

The Council considered 73 requests for increased spending authority or transfers of spending authority which were approved by the Emergency Commission. All the requests were approved, with the exception of the request from the Attorney General relating to the transfer of funds available from cost and fee recoveries relating to the tobacco settlement case for the purpose of providing additional gaming enforcement grants.

COMMERCE AND LABOR COMMITTEE

The Council studied the economic development efforts in the state, including the provision of economic development services statewide and related effectiveness, the potential for the privatization of the Department of Economic Development and Finance, and the appropriate location of the North Dakota Development Fund, including the potential transfer of the fund to the Bank of North Dakota. The Council recommends House Bill No. 1039 to create a North Dakota venture capital fund program to carry out the lending to and investment of private moneys in seed and venture capital partnerships and to provide for a one-time issuance of \$5 million of state tax credits to the authority to offset losses under the program; House Bill No. 1040 to create a North Dakota entrepreneur seed fund program that would be available to local entrepreneur seed fund applicants to invest in North Dakota early-stage companies and small companies through equity or equity-type investments and to provide for a \$3 million appropriation from the general fund to fund the program for the 2001-03 biennium; House Bill No. 1041 to amend the law relating to seed capital investment tax credits to increase use of the seed capital investment tax credits; House Bill No. 1042 to decrease the financial requirements for venture capital corporations to incorporate in the state; Senate Bill No. 2032 to consolidate three state agencies to create a department of commerce, to create a North Dakota commerce cabinet, and to allow for creation of a privately funded North Dakota economic development foundation; and House Bill No. 1043 to provide for state payment of a certain amount of certain student loans through a program administered by the Bank of North Dakota.

The Council studied heritage tourism and the relationships among the State Historical Society, Parks and Recreation Department, Tourism Department, Department of Economic Development and Finance, and private sector promoters and developers of heritage

tourism in the state. The Council makes no recommendations concerning this study.

The Council received reports from Job Service North Dakota regarding incentives to encourage an employee to decrease the length of time that employee receives unemployment compensation benefits and to encourage a negative employer to become a positive employer.

The Council received annual reports from the Division of Community Services on renaissance zone progress. The Council recommends Senate Bill No. 2033 to make several changes to the renaissance zone law.

The Council received an annual report from the Department of Economic Development and Finance and received three reports from the Workers Compensation Bureau regarding the bureau's safety audit of Roughrider Industries work programs and the bureau's performance audit of the modified workers' compensation coverage program, regarding the results of the bureau's study of the awards provided to injured employees with permanent impairments caused by compensable work injuries, and regarding the bureau's recommendations from the bureau's study of the benefits available to persons receiving long-term disability or death benefits from the bureau.

CRIMINAL JUSTICE COMMITTEE

The Council studied the correctional system in North Dakota, including its functions, responsibilities, funding, and operation and the causes of past and projected future increases in the state's adult inmate population, including the impact of sentencing laws. The Council also studied issues related to public safety and state liability in connection with the interstate transfer of convicted felons. The Council recommends House Bill No. 1044 to provide for a new classification of inmate records which would be considered exempt from open records requirements; to provide that medical, psychological, and social records are confidential; and to provide that records with respect to a person's identity, location, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records.

The Council studied the classification of criminal offenses throughout the North Dakota Century Code (NDCC). The Council makes no recommendation concerning this study.

The Council studied the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses, sentencing of sexual offenders, and sexual offender commitment treatment. The Council recommends Senate Bill No. 2034 to provide for changes to the state's civil commitment of sexual offenders statutes in the areas of venue, referrals, open records, and detention and to remove the current exclusion of individuals with mental retardation; and Senate Bill No. 2035 to create the crime of luring

minors by computer, to criminalize the sexual initiation acts of street gangs, to separate disorderly type behavior from the indecent exposure statute, to make indecent exposure a crime for which a person is required to register as a sexual offender, and to expand the statute of limitations for gross sexual imposition to seven years.

CROP HARMONIZATION COMMITTEE

The Council received reports from the Agriculture Commissioner regarding efforts to develop a single, uniform process for the joint North American labeling of crop protection products; reviewed crop protection labeling needs; explored the extent of authority given to the state under federal law regulating registration and use of crop protection products; and reviewed efforts to achieve harmonization of crop protection product registration standards.

The Council studied the chemical application industry to develop a method for assessing or determining damage due to misapplication for resolution of disputes through mediation.

The Council recommends the Crop Harmonization Committee continue working with the Environmental Protection Agency, the Canadian Pest Management Regulatory Agency, the American Crop Protection Association, the Canadian Crop Protection Association, and commodity groups in addressing issues related to harmonization.

EDUCATION FINANCE COMMITTEE

The Council studied the provision of education to public school students in this state and the manner in which education to public school students will be delivered in the ensuing 5, 10, and 20 years, with a focus on demographic changes as they affect equity with respect to courses, facilities, and extracurricular activities; equity with respect to teacher availability and qualifications; equity with respect to the organization and administration of school districts; and taxpayer equity with respect to rural and urban school districts. The Council makes no recommendation regarding this study.

The Council studied the method by which the state funds special education services. The Council makes no recommendation concerning this study.

The Council studied accreditation standards for elementary and secondary schools, including optional accreditation standards, the fiscal impact of accreditation standards, and the waiver of accreditation standards based on student performance. The Council makes no recommendation concerning this study.

The Council studied the feasibility and desirability of developing and implementing statewide academic standards for, and the assessment of, elementary and high school students. The Council recommends Senate Bill No. 2036 to provide for adoption of state academic content standards for schools.

The Council received a report from the Superintendent of Public Instruction regarding the content of school district financial reports and the specific actions taken to account for transfers from school district general funds, to eliminate or reduce variations in the reporting of data, and to ensure that the financial data is available in a form that allows for accurate and consistent comparisons.

EDUCATION SERVICES COMMITTEE

The Council studied NDCC Title 15 provisions that relate to elementary and secondary education. The Council recommends House Bill No. 1045 to rewrite those portions of Title 15 which relate to the Education Standards and Practices Board, superintendent and director dismissal, teacher dismissal, teacher employment contracts, teacher personnel issues, teacher qualifications, compulsory attendance, courses and curricula, kindergartens, home education, school finance, the state tuition fund, the payment of tuition, student transportation, open enrollment, special education, multi-district special education units, boarding home care, child nutrition and food distribution programs, and school construction; House Bill No. 1046 to reconcile references to Title 15 found in other portions of the Century Code; and House Concurrent Resolution No. 3002 to provide for a Legislative Council study of the completed revision of those provisions of Title 15 that relate to elementary and secondary education.

The Council also received a report regarding the reciprocal acceptance of teaching licenses or certificates.

ELECTRIC INDUSTRY COMPETITION COMMITTEE

The Council studied the impact of competition on the generation, transmission, and distribution of electric energy within this state; reviewed electric industry restructuring initiatives in other states; reviewed electric utility taxation in other states; and reviewed federal restructuring initiatives. The Council makes no recommendation concerning this study.

The Council studied the Territorial Integrity Act; reviewed previous studies concerning the Territorial Integrity Act; and reviewed the exclusive electric service area laws of surrounding states. The Council makes no recommendation concerning this study.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

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

The Council studied the number, qualifications, and selection criteria for vendors and providers selected by the Public Employees Retirement System Board for the defined contribution retirement plan and the deferred compensation program. The Council makes no recommendation concerning this study.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council received project updates from representatives of the Garrison Diversion Conservancy District, State Water Commission, and United States Bureau of Reclamation; received information on the Dakota Water Resources Act; received updates concerning Devils Lake flooding; received updates concerning Devils Lake litigation; reviewed the Federal Water Pollution Control Act Section 404 program; reviewed the Farmland or Ranchland Acquisition Advisory Committee; and reviewed the allocation of the state aid distribution fund as it affects the Garrison Diversion Conservancy District.

The Council received a report from the State Engineer on the study of the feasibility and desirability of constructing dams and other impoundments in the Pembina River watershed for the purpose of reducing flows in the lower reaches of the Pembina River.

The Council received periodic reports from the State Engineer regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance and sources for repayment of bonds to finance construction of flood control projects, the Southwest Pipeline Project, a Devils Lake outlet, and a statewide water development program during the 1999-2000 interim.

The Council studied Missouri River issues; reviewed Missouri River streambank erosion and bank stabilization; reviewed the United States Army Corps of Engineers *Master Manual*; and reviewed land and natural resource issues, water management, land use, and development of a long-range vision for the Missouri River in North Dakota. The Council makes no recommendation concerning this study.

HIGHER EDUCATION COMMITTEE

The Council studied higher education funding including the expectation of the North Dakota University System in meeting the state's needs, the funding methodology to meet these expectations and needs, and an appropriate accountability system for the University System. The Council recommends Senate Bill No. 2037 to provide a continuing appropriation of all funds in higher education institutions' special revenue funds and to allow institutions to carry over at the end of the biennium unspent general fund appropriations; Senate Bill No. 2038 to require the budget request for the University System to include budget estimates for block grants for a base-funding component and for an initiative-funding component and a budget estimate for an asset-funding

component and to require the appropriation for the University System to include block grants to the State Board of Higher Education for a base-funding appropriation and for an initiative-funding appropriation and an appropriation for asset-funding; Senate Bill No. 2039 to allow the State Board of Higher Education to authorize campus improvements and building maintenance projects that are financed by donations, gifts, grants, and bequests if the cost of the improvement or maintenance is not more than \$500,000; Senate Bill No. 2040 to allow the University System to provide bonuses, cash incentive awards, and temporary salary adjustments to employees; Senate Bill No. 2041 to recognize the institutions under the control of the State Board of Higher Education as the North Dakota University System and to require the University System to develop a strategic plan which defines University System goals and objectives; and Senate Bill No. 2042 to amend or repeal statutes relating to the powers of the State Board of Higher Education to eliminate duties and responsibilities of higher education institutions which are no longer considered necessary.

The Council studied the role, mission, operation, and privatization of the Division of Independent Study and makes no recommendation concerning this issue.

INFORMATION TECHNOLOGY COMMITTEE

The Council received reports from the Chief Information Officer and representatives of the Information Technology Department regarding the business plan of the Information Technology Department, the activities of the department, the statewide information technology standards, and the statewide information technology plan. The Council received reports regarding the implementation of a new statewide wide area network and reports regarding major information technology projects undertaken by executive branch agencies. The Council recommends Senate Bill No. 2043 to require the Information Technology Committee to review the cost-benefit analysis of any major project of the State Board of Higher Education or any institution under the control of the board if the project significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project. The bill also authorizes the Information Technology Department to purchase equipment and software through financing arrangements, specifies additional requirements that must be included in the department's business plan; replaces the Statewide Wide Area Network Advisory Committee with a state information technology advisory committee; changes the deadline for agencies submitting information technology plans from January 15 to March 15 of each even-numbered year; and provides that information collected by the Information Technology Department from agencies regarding information technology standards, compliance reviews, and plans is exempt from open records requirements.

JUDICIARY COMMITTEE

The Council studied the impacts of court unification on the judicial system and on the effective provision of judicial services to state residents and reviewed and monitored the implementation of legislation enacted by the 56th Legislative Assembly which provided for the delivery of clerk of district court services through state funding and alternative methods. The Council makes no recommendation concerning this study.

The Council, in conjunction with the Joint Family Law Task Force of the State Bar Association, studied the family law process in North Dakota with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods. The Council recommends Senate Bill No. 2044 to provide that property acquired by an individual spouse through inheritance or by gift, if titled and maintained in the sole name of the donee spouse, is the property of that party and is not subject to division upon dissolution of the marriage; Senate Bill No. 2045 to provide for the appointment of child custody investigators and provide immunity for child custody investigators and guardians ad litem; and Senate Bill No. 2046 to consolidate the chapters dealing with divorce and separation into one chapter, to reenact the penalty for intentionally removing a child from the state in violation of a child custody order, to apply the best interest standard to the annulment process, and to remove and update archaic language in the domestic relations statutes. The Council encourages the Council of Presiding Judges to implement an informal procedure whereby the Maricopa County guidelines would be used to calculate spousal support and the results of that calculation should be compared to the actual spousal support awarded by the court. The Council encourages the Supreme Court to explore options for establishing a court-annexed mediation program; to consider adopting a code of ethics for mediators; and to conduct a joint study with the Department of Human Services to explore the possibility of coordinating services and resources in the area of child custody investigators.

The Council studied voter registration and residency requirements. The Council recommends House Bill No. 1047 to permit election board members and poll challengers to request identification from challenged voters in order to address voting eligibility concerns; and House Bill No. 1048 to provide a provisional ballot procedure for the ballots of challenged voters.

The Council reviewed uniform Acts recommended by the North Dakota Commission on Uniform State Laws, including the Revised Uniform Commercial Code Article 9 (1999); the Uniform Foreign Money-Judgments Recognition Act; the Uniform Disclaimer of Property Interests Act (1999); the Uniform Electronic Transactions Act; and the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

The Council conducted public hearings on the constitutional measures scheduled to appear on the primary and general election ballots for the purpose of promoting public discussion and debate on the measures and to create a public history.

The Council makes two recommendations as a result of its constitutional and statutory revision responsibilities. The Council recommends Senate Bill No. 2047 to amend the grandparent visitation statute to comply with the North Dakota Supreme Court's ruling in *Hoff v. Berg*, 595 N.W.2d 285 (1999); and House Bill No. 1049 to make technical corrections to the North Dakota Century Code.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council received and accepted 184 audit reports prepared by the State Auditor's office and independent accounting firms. The Council supported the use of a new audit approach by the State Auditor's office to be used for conducting audits of state agencies and institutions. Among the audit reports accepted by the Council were four performance audits and evaluations--Workers Compensation Bureau, Job Service North Dakota, child support enforcement program, and state agency contracts for services.

The Council reviewed information relating to the Lake Agassiz Regional Council's formation of a nonprofit corporation and the transfer of certain assets from the Regional Council to the nonprofit corporation; reviewed information regarding campaign contributions made by the National Association of State Treasurers in opposition to constitutional measure No. 3 in the June 2000 primary election; and received information related to the UND Aerospace Foundation, Department of Human Services accounts receivable writeoffs, Governmental Accounting Standards Board Statement Nos. 34 and 35, moneys received by the state through the American Cyanamid settlement, and the Department of Public Instruction.

LEGISLATIVE MANAGEMENT COMMITTEE

The Council reviewed legislative rules and makes a number of recommendations intended to clarify the rules and expedite the legislative process. Among major rules changes are (1) to allow each legislator one guest per morning session and one guest per afternoon session and require the guest to be seated with the legislator when the session convenes and prohibit the guest from leaving during debate; (2) to provide that a vote to close or limit debate or to suspend the rules be decided by a majority of the members present, rather than by a two-thirds vote; (3) to provide that the deadline for introducing state constitutional amendment resolutions be the 31st legislative day and the deadline for introducing United States constitutional amendment resolutions be the 18th day (the reverse of what it has been); (4) to

provide that the House and Senate Appropriations Committees be allowed to meet for not more than five calendar days between the legislative organizational session and the regular session; and (5) to provide that committee roll call votes be taken on divided committee reports, that no one may vote for more than one report, and that a member must sign the report for which that member voted.

The Council authorized enhancements to the legislative systems to eliminate duplication of entries by desk force personnel and provide that the desk reporter (who is renamed the journal reporter) updates the bill status system, the Legislator's Automated Work Station (LAWS) system used by legislators, and the journal system when the journal reporter finalizes the journal at the end of the day.

The Council authorized use of the north portion of the Senate locker room as a command center for the security monitors in order to provide a centralized location for capitol security officers, authorized replacement of the voting system in each chamber, authorized replacement of the sound system in each chamber, authorized a smoke detection system in each chamber, and authorized replacing the chair lift in the west entryway to the Brynhild Haugland Room.

The Council recommends contracting with a third party for secretarial services and telephone message services during the 2001 legislative session, authorized contracting with the bill and resolution printer for bill and journal room services during the 2001 session, recommends that the Senate employ 34 Senate employees and the House employ 39 House employees during the 2001 session, and recommends that legislative session employee compensation rates generally be increased by five percent.

The Council authorized acquisition of legislative redistricting software to begin planning for legislative redistricting in 2001.

The Council recommends Senate Bill No. 2048 to provide that the legislators who attend standing committee hearings authorized between the legislative organizational session and the regular legislative session receive session compensation rather than interim per diem; House Bill No. 1050 to provide that the Governor must deliver bills to the Secretary of State within certain timeframes, depending on whether the delivery is during the legislative session or after the session; and House Concurrent Resolution No. 3003 to direct the Legislative Council to study and develop a legislative redistricting plan or plans for use in the 2002 primary election.

REGULATORY REFORM REVIEW COMMISSION

The Council studied this state's telecommunications law and reviewed the effects of federal universal support mechanisms on telecommunications companies and consumers in this state as well as the preservation and advancement of universal service in this state. The Council makes no recommendation concerning this study.

TAXATION COMMITTEE

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

The Council studied the application, enforcement, and administration under the fuels tax laws. The Council makes no recommendation concerning this study.

The Council studied the feasibility and desirability of establishing a mechanism to allow farmers and ranchers to shelter a portion of their income in an agricultural real estate asset retirement-type fund. The Council recommends Senate Concurrent Resolution No. 4003 urging Congress to reduce or eliminate the impediment of capital gains and estate taxes on passage of stewardship of family farms to succeeding generations; Senate Concurrent Resolution No. 4004 urging Congress to provide a greater opportunity for farmers to participate in retirement investments by allowing withdrawals without penalty when necessary to support family farming operations; Senate Concurrent Resolution No. 4005 urging Congress to reduce or eliminate capital gains taxes on inflationary valuation increases of farm and ranch property; and Senate Concurrent Resolution No. 4006 urging Congress to enact legislation to allow FARRM accounts and to consider limiting the size of the accounts rather than the time funds may be held in the accounts.

The Council studied potential tax incentives and regulatory relief that would encourage greater investment participation by North Dakota residents in agricultural business ownership. The Council recommends House Bill No. 1051 to establish a farmers equity trust fund to be used by the Agricultural Products Utilization Commission to acquire ownership interests on behalf of the fund in value-added agricultural projects or for loans to value-added agricultural projects; House Concurrent Resolution No. 3004 urging Congress not to implement or allow implementation of the Kyoto Protocol because of the potentially disastrous impact on American agriculture; and House Bill No. 1052 to provide a complete sales and use tax exemption for sales and used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes.

ADMINISTRATIVE RULES COMMITTEE

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

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

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

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

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

Committee members were Representatives William R. Devlin (Chairman), LeRoy G. Bernstein, Rex R. Byerly, Duane DeKrey, Mary Ekstrom, Bette Grande, Pam Guleson, George J. Keiser, Kim Koppelman, Stacey L. Mickelson, Jon O. Nelson, Darrell D. Nottestad, Sally M. Sandvig, and Blair Thoreson and Senators John Andrist, Tom Fischer, Jerry Klein, Deb Mathern, Bob Stenehjerm, and Rich Wardner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those state agencies authorized to adopt rules under the Administrative Agencies Practice Act (NDCC Chapter 28-32). By statute, a rule is an agency's statement of general applicability that implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. Properly adopted rules have the force and effect of law. A copy of each rule adopted by an administrative agency must be filed with the office of the Legislative Council for publication in the North Dakota Administrative Code.

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

For rules scheduled for review, each adopting agency is requested to address the following:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related 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 presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. Each agency is asked to describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint and to summarize the comments of any person who offered comments at the public hearings on these rules.
5. Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rules are expected to have an impact on the regulated community in excess of \$50,000, and whether a regulatory analysis was issued. A copy is to be provided to the committee if a regulatory analysis was prepared.
6. The approximate cost of giving public notice and holding hearings on the rules and the approximate cost (not including staff time) used in developing and adopting the rules.
7. The subject matter of the rules and the reasons for adopting the rules.
8. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-02.5. A copy is to be provided to the committee if a constitutional takings assessment was prepared.
9. If the rules were adopted as emergency rules under NDCC Section 28-32-02(6), the agency is to provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support the declaration.

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

Current Rulemaking Statistics

The committee reviewed 2,074 rule sections that were changed from November 1998 through

November 2000. Table A shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

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

Time Period	Number of Sections
November 1986 - October 1988	2,681
November 1988 - October 1990	2,325
November 1990 - October 1992	3,079
November 1992 - October 1994	3,235
November 1994 - October 1996	2,762
November 1996 - October 1998	2,789
November 1998 - November 2000	2,074

For committee review of rules at each meeting, the Legislative Council staff prepares an administrative rules supplement containing all rules changes submitted for publication since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, e.g., changes are indicated by overstrike and underscore. Comparison of the number of pages of rules amended, created, or repealed is another method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of pages in administrative rules supplements during designated time periods:

Time Period	Supplement Pages
November 1992 - October 1994	3,809
November 1994 - October 1996	3,140
November 1996 - October 1998	4,123
November 1998 - November 2000	1,947

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

Voiding of Rules

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

the committee makes the specific finding that with regard to the rule there is:

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

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

State Board of Nursing

The State Board of Nursing adopted rules governing medication administration. Committee members were concerned about whether the rules applied in schools, whether the rules conflicted with 1999 legislation that exempted long-term care facility employees from medication administration rules of the State Board of Nursing, and whether the rules conflicted with 1999 legislation that directed the Department of Human Services and State Board of Nursing to jointly develop a recommendation regarding administration of medication in a residential treatment center, care center for developmentally disabled persons, or residential care facility. The committee carried over consideration of the rules to the subsequent meeting to receive further information. The committee received information from the State Board of Nursing, Department of Public Instruction, Department of Human Services, and North Dakota Long Term Care Association that resolved the concerns of the committee.

Highway Patrol

The Highway Patrol adopted rules to eliminate the heavyweight fee for out-of-state motor vehicle carriers and to reduce ton mile fees for overweight permits. Committee members were concerned with the estimated loss of revenue of \$478,000 per biennium to the state highway fund from these fee changes and whether the negative revenue impact was considered in the Department of Transportation's budget for the biennium. The

committee carried consideration of the rule over to the subsequent meeting to receive further information. The committee received information from the Department of Transportation that the negative fiscal effect of the fee changes was reflected in the executive budget submitted to the 56th Legislative Assembly, and the negative effect was to be offset by an additional \$1.1 million in fees generated as a result of 1997 legislation.

Milk Marketing Board

The Milk Marketing Board adopted rules to allow third-party contract haulers to haul milk products directly to retail outlets under minimum dock pick up pricing provisions and to allow retailers a 23 percent discount on wholesale prices for milk orders of 45 or more full cases of milk. Committee members were concerned that the rules were adopted as emergency rules effective August 31, 1998, but the rules were not finally adopted by the Milk Marketing Board until February 1999; whether the rules met the statutory grounds for what constitutes an emergency for rulemaking purposes; and whether the discounts for large purchases of milk discriminated against small retailers because the rules did not allow them to join together to make larger purchases to qualify for the discount. The committee carried consideration of the rule over to the subsequent meeting to receive further information. At the subsequent meeting, the Milk Marketing Board advised the committee that it decided to reopen public hearings on the rules. Subsequent rules were adopted by the Milk Marketing Board and reviewed by the committee that, among other things, allowed more small retail grocers to participate in hauling of milk products by contract haulers, reduced the minimum order from 45 cases to 27 cases to qualify for the discount under the minimum dock pick up price discount program, and granted additional discounts to small retail grocers for limited or full-service distribution.

Superintendent of Public Instruction

The Superintendent of Public Instruction adopted a substantial body of rules pursuant to 1997 legislation that made the Superintendent of Public Instruction an administrative agency for all rulemaking purposes. Committee members and education groups expressed concern about inadvertent omission from the rules of provisions on counselor credentials, elementary principals licensing exceptions, and some issues of possible interpretation problems. The committee carried consideration of the rules over to the subsequent meeting to receive further information and to allow concerned groups to work with the Superintendent of Public Instruction on issues of concern to them. At the subsequent meeting, the Superintendent of Public Instruction suggested several amendments to the rules to address these concerns, and the committee agreed with the Superintendent of Public Instruction on the amendments.

Department of Human Services

The Department of Human Services adopted rules governing ratemaking for reimbursement of nursing homes and basic care facilities. North Dakota Long Term Care Association representatives disagreed with changes to reimbursement for housekeeping services, treating property costs as passthrough costs, and the 90 percent occupancy limit imposed by the rules for basic care facilities. The committee carried consideration of the rules over to the subsequent meeting to receive further information. The department and the association resolved their differences on the rules except with regard to the limit of 90 percent of licensed bed capacity for basic care facilities. Committee members pointed out that the Legislative Assembly has imposed a 90 percent occupancy limit in the statutory provisions governing nursing home reimbursement but has not set a corresponding limitation in statutes governing basic care facility reimbursement. The committee received information that there was no fiscal note or any effort to adjust the budget of the Department of Human Services to reflect a 90 percent occupancy limit for basic care facilities during the 1999 legislative session. Committee members suggested the Department of Human Services should bring this issue forward as legislation for consideration in the 57th Legislative Assembly. The committee approved a motion to void the rule imposing a 90 percent occupancy limitation for basic care facilities. The department did not seek review of this motion, and the rule change became void.

The Department of Human Services adopted medical services reimbursement rules. At the first meeting for committee consideration of the rules, the department requested the committee to void portions of the rules requiring prior authorization by the Department of Human Services for coverage for partial hospitalization and certain categories of prescribed drugs. The department said the request to void these rules resulted from a substantial number of negative comments received after the rules were adopted. The committee approved a motion to void those portions of the rules. The committee also carried consideration of portions of the rules applying a standard of "medically necessary" that must be met before coverage is provided for ambulance and emergency room services over to the subsequent meeting. At the subsequent meeting, the department submitted proposed amendments that were agreed upon by the North Dakota Medical Association. The committee agreed with the department on the amendments.

Board of Animal Health

The Board of Animal Health adopted rules requiring a chronic wasting disease risk assessment for all cervidae to be imported into the state. Cervidae are antlered cud-chewing animals such as deer, elk, and moose. Groups representing nontraditional livestock growers protested

that the coverage of the rules is too broad because it applies to all cervidae while only certain species, particularly elk, are subject to chronic wasting disease. The committee carried consideration of the rules over to the subsequent meeting to receive further information. At the subsequent meeting, the Board of Animal Health submitted proposed amendments to limit coverage of the rules to species at risk to contract chronic-wasting disease. Nontraditional livestock growers group representatives agreed with the proposed changes, and the committee agreed upon the amendments with the Board of Animal Health.

State Gaming Commission

The State Gaming Commission adopted rules governing charitable gaming. Committee members expressed concern that the rules allowed use of electronic bingo card marking devices. Use of these devices allows bingo players to electronically play up to 72 cards at a time. Committee members expressed concern that authorizing these devices constitutes an expansion of gaming, contrary to long-standing policy of the Legislative Assembly. The committee carried consideration of the rules over to the subsequent meeting to receive further information. The committee reviewed subsequent information submitted by the State Gaming Commission, including a legal memorandum on whether use of the devices would be prohibited by statute. A motion to void the portions of the gaming rules allowing use of electronic bingo card marking devices failed.

Board of Psychologist Examiners

The Board of Psychologist Examiners adopted rules governing licensing and fees of psychologists. Committee members expressed concern that the rules set fees for licensees and out-of-state registrants that exceed statutory limits. The committee carried consideration of the rules over to the subsequent meeting to receive further information. Upon receiving information at the subsequent meeting, the committee took no further action.

Committee Considerations

Committee members raised several concerns during discussion of the administrative rules process and statutes. It was suggested that comments on rules should be submitted to the Legislative Council when rules are published so committee members can have access to comments for review before the committee reviews the rules.

Concern was expressed that emergency rules can be adopted and become effective and enforceable almost six months before the agency must finally adopt the rules. Emergency rules could be in effect for a year or more before they are reviewed by the Administrative Rules Committee.

Committee members expressed concern that the public may be unaware of the review of rules by the

Administrative Rules Committee. It was suggested that agencies should inform interested parties of when rules adopted by the agency will be considered by the Administrative Rules Committee.

Rulemaking provisions of the Administrative Agencies Practice Act have become crowded into a few sections of law. The provisions in each section on rulemaking may deal with a variety of subjects. Because subjects are intermixed, the reader has difficulty locating provisions on a specific topic. It was suggested that revision of the chapter without substantive changes could reorganize provisions into shorter sections to allow the laws to be more understandable.

The Attorney General's office suggested that the committee review statutory rulemaking authority for agencies. During the 1979-80 interim, the Administrative Rules Committee studied the Administrative Agencies Practice Act, especially the difficulty caused by the definition of "administrative agency" which then required substantive administrative procedure authority outside NDCC Chapter 28-32 before the provisions of Chapter 28-32 would apply. As a result of that study, the 1979-80 interim committee recommended legislation to revise the definitions so that Chapter 28-32 applied to every executive branch agency except those the Attorney General or a court had determined were not subject to Chapter 28-32 under the prior definition. During that interim, time did not permit a review of the entire Century Code to revise or eliminate references to Chapter 28-32 to reflect the committee's recommendation. As a result, there are hundreds of individual provisions throughout the Century Code which provide rulemaking authority for agencies. This apparent incongruity has caused some to question whether an agency has rulemaking authority for all its programs when some programs contain specific rulemaking authority and some do not, even though the agency is an "administrative agency" with general rulemaking authority under Chapter 28-32. The issue is whether the programs that have no specific rulemaking authority were not intended by the Legislative Assembly to have rulemaking authority or whether the Legislative Assembly recognized that general rulemaking authority would apply under Chapter 28-32 in those cases. A survey of statutory provisions was completed, letters were sent to all administrative agencies asking them to review statutory provisions, and a compilation of statutes providing rulemaking authority was completed. The survey identified 646 statutes providing specific rulemaking authority. The committee considered a bill draft that would have eliminated general rulemaking authority under Chapter 28-32 and would have required explicit statutory rulemaking authority for agencies before rules could be adopted. This approach raised several concerns, including whether the Legislative Assembly would have to consider the issue of rulemaking in every piece of future legislation, whether every appropriations bill would require rulemaking provisions, whether placement of

new laws in the North Dakota Century Code in chapters with or without explicit rulemaking authority would determine whether rulemaking authority exists under those statutes, and the fact that rulemaking provisions would still be rather general in nature because those provisions are worded to apply to a chapter of law or to all laws administered by an agency. The committee did not approve the bill draft.

Recommendations

The committee recommends House Bill No. 1027 to require agencies to notify interested parties when rules will be considered by the Administrative Rules Committee.

The committee recommends House Bill No. 1028 to require agencies to obtain Administrative Rules Committee approval of emergency status of rules that have been declared effective on an emergency basis. The bill is intended to not add any additional delay to the time when an agency may make a rule effective on an

emergency basis under existing law. The bill allows an agency to declare rules effective on an emergency basis in the same manner as under current law but requires the agency to seek approval of the emergency grounds for the rules from the Administrative Rules Committee at the first committee meeting after the effective date of the rules. The bill provides that if the emergency status of the rules is disapproved by the committee, the agency may proceed with adoption of the rules that would become effective at the normal time rules take effect.

The committee recommends House Bill No. 1029 to require agencies to file comments received on rules with the Legislative Council when the rules are filed for publication.

The committee recommends House Bill No. 1030 to revise the Administrative Agencies Practice Act to reorganize the provisions on administrative rulemaking. The bill is intended to reorganize the chapter without substantive change.

TABLE A

STATISTICAL SUMMARY OF RULEMAKING							
November 1998 Through November 2000				Supplements 233 Through 257			
Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
State Board of Accountancy	33	3		5			41
Office of Management and Budget		5					5
Department of Agriculture	1	34					35
Attorney General	14	1		4			19
Department of Banking and Financial Institutions	4	3					7
North Dakota State Board of Dental Examiners	8	1					9
North Dakota Board of Dietetic Practice	7						7
Electrical Board	17	2		4	1		24
Board of Registration for Professional Engineers and Land Surveyors	41			1			42
Game and Fish Department	18						18
North Dakota State Board of Cosmetology	11	3					14
State Department of Health	35	10		102			147
Department of Transportation	8						8
Highway Patrol	9	10					19
Board for Indian Scholarships	6	12					18
Industrial Commission	46	6					52
Insurance Department	40	43					83
Board of Animal Health	2	10					12
State Board of Medical Examiners	7	30		1			38
Milk Marketing Board	36			4			40
State Board of Nursing	6	9		1			16
State Board of Examiners for Nursing Home Administrators	11			1			12
Board of Occupational Therapy Practice	14	1		1			16
Pesticide Control Board	1						1
State Board of Pharmacy	6	24					30
State Plumbing Board		22		242			264
Board of Psychologist Examiners	16	5		4			25
Department of Public Instruction	1	323				7	331
Education Standards and Practices Board	44	7					51
Public Service Commission	56	6		3			65
Real Estate Commission	10	2					12
Public Employees Retirement Board	14	14					28
Secretary of State	6			1			7
Department of Human Services	95	33		1	2		131
Retirement and Investment Office	11	4		2			17
Board of Veterinary Medical Examiners	14	13					27
State Water Commission	13	1		9			23
Workers Compensation Bureau	25	5		76	1		107
Private Investigative and Security Board	2	29		31			62
Department of Corrections and Rehabilitation				109			109
Agricultural Products Utilization Commission		8					8
State Gaming Commission	84	1		7			92
North Dakota Board of Hearing Instrument Dispensers	2						2
Sections Affected	774	680	0	609	4	7	2,074
Grand Total All Sections	2,074						

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

North Dakota Century Code Chapter 54-35.2 establishes the Advisory Commission on Intergovernmental Relations. The commission is directed by law to study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any other government, allocation of state and local resources, and interstate issues involving local governments. During the 1999-2000 interim, the commission focused on 12 areas of interest as headlined in this report.

North Dakota Century Code Section 54-35.2-01 establishes the membership of the commission as four members of the Legislative Assembly appointed by the Legislative Council, two citizen members appointed by the North Dakota League of Cities, two citizen members appointed by the North Dakota Association of Counties, one citizen member appointed by the North Dakota Township Officers Association, one citizen member appointed by the North Dakota Recreation and Park Association, and the Governor or the Governor's designee. The Legislative Council designates the chairman of the commission. All members of the commission serve a term of two years beginning July 1, 1999. Commission members were Senators Elroy N. Lindaas (Chairman), Tim Mathern, and Darlene Watne; Representative Earl Rennerfeldt; League of Cities representatives Bob Frantsvog and Mel Jahner; Association of Counties representatives Les Korgel and Maxine Olson-Hill; Township Officers Association representative Ken Yantes; North Dakota Recreation and Park Association representative Randy Bina; and Governor's designee Carter Wood.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

PARK DISTRICT MILL LEVY CONSOLIDATION

Background

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

In 1995 the Legislative Assembly enacted Senate Bill No. 2081, which allowed a taxing district to levy up to two percent more in 1995 and up to two percent more in 1996 than was levied in the taxing district's base year. The bill defined "base year" as the taxing district's taxable year with the highest amount levied in dollars in

property taxes of the three taxable years immediately preceding the budget year. The bill did not allow optional levy increases for taxable years after 1996 and allowed taxing districts to levy only up to the amount levied in the base year after 1996.

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

During the 1997-98 interim, the Advisory Commission on Intergovernmental Relations received testimony from local government officials requesting the commission to consider proposing legislation similar to the 1997 legislation that would either eliminate or suspend the mill levy limitations. Although the commission members generally supported the concept of either suspending mill levies or consolidating mill levies, the commission members were reluctant to recommend legislation because of inadequate time to consider the idea during the interim.

In 1999 the Legislative Assembly considered, but did not enact, Senate Bill No. 2346, which would have suspended for two years all statutory mill levy limitations that affect the amount that may be levied by cities, counties, and park districts.

Testimony

A representative of the North Dakota Recreation and Park Association requested that the commission recommend a bill based on 1997 Senate Bill No. 2021, but which would consolidate certain park district mill levies to allow for growth of the 222 park districts throughout the state. Testimony was received that a total of 40 mills could be consolidated and established as a cap for general park district operations, with mills for other uses being left out of the consolidation. A representative of the Tax Department suggested the commission consider changing the language of the proposed bill draft to make changes such as simplifying the transition to the new system.

Recommendation

The commission recommends House Bill No. 1031 to consolidate the park district mill levies for recreation, pest control, insurance, forestry, facilities, handicapped

programming, and health insurance with the park district general fund levy. The bill provides for a simplified transition so the amount of a park district general fund levy is based on the sum of the amounts levied in property taxes for the consolidated mill levies.

COMMISSION MEMBERSHIP

The commission considered the issue of membership on the commission. A representative of the North Dakota School Boards Association expressed concern that the membership does not include representation of the North Dakota School Boards Association. A reported benefit of including school board representation on the commission is the importance of encouraging cooperation and communication between the schools and state and local governments. Testimony indicated the North Dakota School Boards Association is not represented at the state level, as the Department of Public Instruction does not always have the same agenda as school boards.

The commission was aware that in 1987 the Governor appointed an executive Advisory Commission on Intergovernmental Relations, which included representation from school boards, but ultimately this representative was not included when the commission was statutorily established in 1989. Although there was discussion regarding increasing the commission membership to include a representative from the North Dakota School Boards Association when the enabling legislation was considered, action was not taken to implement this change.

Recommendation

The commission recommends House Bill No. 1032 to increase the Advisory Commission on Intergovernmental Relations membership from 11 members to 12 members to include a representative of the North Dakota School Boards Association.

TOBACCO EDUCATION AND CESSATION

The commission considered the issue of state funding of city and county public employee tobacco education and cessation programs. The commission received testimony that the city of Minot has been plagued with increasing employee health insurance costs. Two years ago, Minot started a self-funded health plan, and as part of this health plan, the city is using incentives to improve employee health. When Minot considered creating a tobacco education and cessation program for city employees, the city discovered there are no state matching funds available to help fund the program. A representative of the city of Minot suggested the commission consider funding a city and county public employee tobacco education and cessation program from a portion of the tobacco settlement trust fund. The State Health Officer reported that studies

indicate employees who use tobacco have higher absentee rates and higher health care costs.

North Dakota Century Code Section 54-27-25 addresses distribution of the tobacco settlement trust fund, and provides that the community health trust fund receives 10 percent of the total annual transfers from the tobacco settlement trust fund, the common schools trust fund receives 45 percent, and the water development trust fund receives 45 percent.

The State Health Officer reported that although the 56th Legislative Assembly did not appropriate any money from the community health trust fund for the 1999-2001 biennium, the Legislative Council's interim Budget Committee on Health Care was studying the issue of the use of funds from the community health trust fund. The State Health Officer's recommendation to the Budget Committee on Health Care was to use approximately \$2 million of the funding for the healthy schools program, \$2 million of the funding for the healthy families program, and \$1 million of funding for the healthy communities program. As reported in the report of the Budget Committee on Health Care, that committee is recommending augmenting the revenue to the community health trust fund by returning community health trust fund interest to the community health trust fund and by depositing water development trust fund interest in the community health trust fund. The State Health Officer testified that under the community health trust fund program, cities and counties will be provided resources that could be used for public employee tobacco education and cessation programs; however, the program will leave the specific use of the community health trust fund to local control.

Recommendation

The commission recommends Senate Bill No. 2024 to clarify that cities and counties may use community health trust fund money to provide matching funds for city and county public employee tobacco education and cessation programs and to provide that the community health trust fund be augmented by returning community health trust fund interest to the community health trust fund and by depositing water development trust fund interest in the community health trust fund.

INSTITUTIONS OF PUBLIC CHARITY PROPERTY TAX EXEMPTION

The commission considered the issue of whether there is a need for clarification of the law regarding what organizations are institutions of public charity and therefore exempt from paying property taxes. Testimony was received that nursing homes have been known to sponsor a variety of services that are something less than nursing home services. As a result, there is uncertainty at the local level whether medical services and housing services that are sponsored by nursing homes should be taxed or whether the entities that provide

these services are institutions of public charity and therefore exempt from paying property tax. As a result of this uncertainty, there may be a lack of uniformity in the application of the property tax exemption for institutions of public charity providing medical services and housing services.

Testimony indicated there is not a statutory definition of institutions of public charity, and therefore the Tax Department looks to Attorney General opinions and court cases to help define the term.

Recommendation

The commission recommends Senate Concurrent Resolution No. 4001 to provide for a study of property tax exemptions for institutions of public charity that provide medical services and housing services.

MUNICIPAL COURT FINE COLLECTION

The commission received testimony regarding problems cities are having in collecting municipal court fines. The testimony indicated that collection of fines is very time-consuming for city employees, and tracking outstanding debt is a never-ending task for city employees. The amount of uncollected municipal court fines seems to be increasing and seems to be a problem occurring across the country.

A North Dakota League of Cities report indicated that uncollected municipal fines as of July 2000 for the following cities were:

- Dickinson \$29,246;
- Fargo \$696,224;
- Grand Forks \$495,919;
- Mandan \$44,500;
- Minot \$133,991;
- Valley City \$33,445; and
- Williston \$143,828.

State statutes appear to provide municipal courts with the same fine collection tools as district courts. These collection tools include contempt proceedings, probation conditions, imprisonment, and bail provisions. Additionally, municipal courts have the power to convert an order for a fine into a civil judgment in favor of the city. It was reported that the problem is the actual collection, and the collection problem is not unique to cities because there is nonpayment in every type of business. North Dakota Century Code Section 12.1-32-05 provides that an individual may be put in jail for up to 30 days for nonpayment of a fine if that person has the ability to pay. Suspension of driving privileges and of occupational licenses is a possible tool; however, the ability-to-pay issue remains. If an offense is not related to traffic, a person's inability to pay would prevent suspension of driving privileges.

Recommendation

The commission recommends the commission chairman send a letter to interested parties, including the

League of Cities, court administrator of the North Dakota Supreme Court, North Dakota Municipal Courts, and the Attorney General, encouraging improved communication between the parties regarding the collection of municipal court fines.

DISASTER RELIEF

The commission considered the issue of creating a disaster relief fund, received reports on the status of Devils Lake flooding, and reviewed the status of disaster relief programs available in the state.

Disaster Relief Fund

A representative of the Township Officers Association suggested the commission study the establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster areas. Counties and townships are dealing with slowly occurring disasters such as flooding, and something needs to be done to help these counties and townships deal with maintaining infrastructure.

The 56th Legislative Assembly adopted Senate Concurrent Resolution No. 4049, which directed the Legislative Council to study the establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster areas; however, the Legislative Council did not prioritize this resolution for study.

The commission received information regarding how other states have addressed the issue of disaster relief. States that adopt emergency management trust fund legislation most often focus on supplementing existing state and local government emergency management budgets. The funds are most often used to reduce the effect and prevent future losses from natural disasters through:

- Providing proactive mitigation and reactive mitigation;
- Preparing communities to respond to disasters;
- Establishing state programs of disaster assistance available if the federal government is not involved; and
- Providing matching funds for federal disaster aid programs.

Possible funding sources for an emergency management trust fund include:

- General fund appropriations;
- Emergency management fees;
- Property title surcharges collected at the point of property title registration;
- Insurance surcharges;
- Insurance premium taxes;
- Civil penalties and fines for violating environmental and land use planning statutes;
- Public utility assessments;
- State lottery proceeds; and
- Donations and grants.

The current insurance premium tax is 1.75 percent of property and casualty insurance premiums; however, foreign insurance companies typically pay a higher tax rate due to the fact that North Dakota retaliates against companies domiciled in other states if the foreign state charges a higher rate of tax than North Dakota and requires North Dakota insurance companies to pay this higher rate. The end result is that increasing the premium has the effect of negatively impacting domestic insurance companies.

Another possible insurance funding mechanism is to impose an insurance policy surcharge, and this approach may avoid the issues invoking retaliation. A representative of the insurance industry testified that if a disaster relief fund is funded through an insurance premium tax or an insurance policy surcharge, this would likely be considered retaliatory and therefore negatively impact domestic insurance companies.

The commission considered bill drafts that would have funded a disaster relief fund through a property insurance premium tax or a property insurance surcharge and would have provided financial relief to taxing districts or to taxpayers. In the case of the bill draft that would have provided financial relief to taxpayers, the commission considered a tax credit similar to the homestead tax credit.

Disaster Relief Status

The commission received a disaster relief status report on the impact of Devils Lake flooding on real property. Research indicates Devils Lake has flowed into the Sheyenne River at least twice in the last 4,000 years. Since 1940 Devils Lake has been on a rising phase, and this increase accelerated in 1993. From February 1993 to August 1999, the lake rose 24.7 feet, and flood damages in the basin exceeded \$300 million. In terms of land flooded, Devils Lake has increased from 45,000 acres in 1993 to 120,000 acres in 2000. Most of the 75,000 acres flooded since 1993 have been pastureland and hayland; however, a large portion of the land above the lake's current elevation is cropland, which has a much higher value and tax base, which means the impact to agriculture may increase significantly as the lake rises.

Testimony was received that the State Water Commission is working on creating an outlet for Devils Lake. The State Water Commission is a local sponsor for a permanent outlet that would be built by the United States Army Corps of Engineers and is also in the preliminary design phase of a temporary outlet in the Twin Lake area which could be built to provide short-term relief before the corps project is built.

The Federal Emergency Management Agency, through the flood insurance program, has reimbursed property owners for losses to structures. State and federal highways have been raised several times, largely with federal dollars. Additionally, many township and

county roads have also received federal funds, although local funds are being stretched to pay the nonfederal cost-share portion.

Testimony was received that a significant gap in aid is in the area of damages to land. Most landowners around Devils Lake have received very little help because most existing programs exclude flooded land. Benson and Ramsey Counties have reclassified almost 70,000 acres from agricultural land to wasteland, and this reclassification reduces the taxes collected to only a fraction of the original amount but keeps the land on the tax rolls.

Disaster Relief Programs

The commission received disaster relief program reports from representatives of the Division of Emergency Management, Bank of North Dakota, and Municipal Bond Bank.

Division of Emergency Management

The Division of Emergency Management has 20 full-time employees, and at the county level each county has an emergency manager. Funding for the division includes \$500,000 of general revenue and equal federal matching money, and the division receives some funding as a result of the hazardous chemical fee. Testimony was received that the day-to-day emergency management needs are being met by the state's appropriation; however, local government may wish to seek funding for day-to-day management needs. Funding for local government emergency response and disaster recovery is provided through the Bank of North Dakota. North Dakota is unique because with a state bank, local governments are able to receive loans for disaster recovery.

State and local governments have received \$600 million from the federal government in disaster relief funding since 1993. In a typical year, the state receives between \$55 million to \$60 million of federal funding. Federal money typically comes with a matching requirement that varies from disaster to disaster.

Bank of North Dakota

The commission received information on disaster relief loans available through the Bank of North Dakota. The Bank planned on providing assistance in the following areas due to the year 2000 flooding in the Red River Valley:

- Business assistance;
- Agricultural assistance;
- Residential assistance;
- Student loan deferment;
- North Dakota State University assistance; and
- City of Fargo assistance.

Municipal Bond Bank

The commission received information on the loans available through the Municipal Bond Bank to political subdivisions in cases of emergencies or disasters. The purpose of the Municipal Bond Bank is to make low-cost loans to North Dakota political subdivisions at favorable interest rates. The Municipal Bond Bank is a self-supporting state agency that receives no money from the state general fund. The two loan programs available through the Municipal Bond Bank are the capital financing program and the state revolving fund program. A third loan program is being established by the Municipal Bond Bank to address school construction.

Conclusion

The commission makes no recommendation with respect to its review of disaster relief.

LEADERSHIP INITIATIVE FOR COMMUNITY STRATEGIC PLANNING

The commission received a report on the status of the Leadership Initiative for Community Strategic Planning. The Leadership Initiative for Community Strategic Planning was formed as a result of a November 1998 meeting of federal, state, and nonprofit agencies. The purpose of the initiative is to assist communities by assisting in a single strategic planning process that will reduce the need for communities to complete a strategic plan for every agency requiring a plan for funding purposes. The initiative services were initially offered to two communities as a pilot project, but the initiative is expanding its scope to provide services statewide.

Conclusion

The commission makes no recommendation with respect to its review of the Leadership Initiative for Community Strategic Planning.

GOVERNMENTAL SERVICES

The commission received information from the Child Support Enforcement Division of the Department of Human Services, the North Dakota Supreme Court, and the Driver and Vehicle Services Division of the Department of Transportation.

Child Support Services

The commission received a report on the status of the child support state disbursement unit and the provision of child support services at the local level. Conversion to the state disbursement unit began in November 1998, and court-ordered conversion has essentially been completed.

Testimony was received that implementation of the state disbursement unit has had an impact on services at the local level. At current staffing levels and with location at a single site, the state disbursement unit cannot deliver the personal services previously provided by the

clerks of court; however, the state disbursement unit is able to provide consistent service and quick turnaround of child support funds.

Judicial Services

The commission received a report on the provision of judicial services at the local level. The statutory requirement to decrease the number of district court judges has resulted in the provision of a reduction of judicial services at the local level. Testimony was received that the natural result of decreasing the number of judges is to locate judges in larger communities because that is where a larger number of cases are located, and the decrease in judges may result in communities relying more heavily upon municipal judges, who are not necessarily law-trained.

Motor Vehicle Registration Services

The commission received a report on the provision of motor vehicle registration services at the local level. Although all motor vehicle registration services can be performed by mail, there are 13 privatized motor vehicle registration service branches throughout the state. The Bismarck office performs seventy percent of the operations, and the branch offices perform thirty percent of the operations. Testimony indicated this distribution of labor may change as a new computer system is implemented, which will allow branch offices to key data directly into the system.

Conclusion

The commission makes no recommendation with respect to its review of the provision of governmental services at the local level.

ROAD MAINTENANCE

Representatives of local government expressed concern to the commission regarding the funding of maintenance of local roads. The director of the Department of Transportation reported that North Dakota has more miles of road per capita than any other state in the nation. North Dakota receives approximately two dollars of federal highway funds for every one dollar North Dakotan drivers pay into the federal highway trust fund. Federal-aid highway projects are generally funded with 80 percent federal money and 20 percent state or local matching funds. The major sources of revenue going into the State Highway Distribution Fund are fuel taxes, motor vehicle registration fees, and the special fuels excise tax. Historically, the revenue in the state highway distribution fund has been allocated 63 percent to the Department of Transportation, 23 percent to the counties, and 14 percent to the cities. Twenty-five to thirty percent of federal funds received by the states is typically funneled to the counties and cities.

A representative of the Department of Transportation testified that the department needs to work with city,

county, and township representatives to plan the future of road systems, and the department needs to work with private enterprise to address future road system needs. Cooperation and planning should allow the state to keep up with road maintenance in the state.

Conclusion

The commission makes no recommendation with respect to its review of funding of maintenance of local roads.

CENSUS 2000

The commission received testimony regarding the United States Census 2000 and areas of possible state and local government interest. The 2000 census is unique because the federal government did not include funding for a recount or revision of the census figures. Two classifications on which communities should focus are college students, who are counted in the community in which they attend school, and snowbirds, who are counted in North Dakota if they spend at least six months of the year in the state.

Conclusion

The commission makes no recommendation with respect to its review of the year 2000 census.

REVENUE SHARING AND PERSONAL PROPERTY TAX REPLACEMENT

The commission received a report from the North Dakota Association of Counties regarding the history and current status of revenue sharing and personal property tax replacement. The commission reviewed the history of revenue sharing and personal property tax replacement from 1969 to the present. In 1997 House Bill No. 1019 was introduced to address legislative concerns and also protect local governments from funding reductions. The following elements were in the bill:

Four-tenths of the first penny of sales tax would be the revenue generating formula. Local governments were, in reality, sharing about .38 of the first penny in the previous biennium.

All revenue in the fund would be allocated through a continuing appropriation so that future legislative action would not be required.

The revenue sharing and personal property replacement programs allocation formulas would be repealed, removing ties to personal property collections in 1968 and eliminating the connection between increased property taxes and increased state aid for individual jurisdictions.

Direct allocations from the state would be eliminated for all entities except counties and cities.

Counties would be required to allocate to townships and cities to park districts at the same proportion that existed under the old formula in 1996.

All revenues would go into an entity's general fund for appropriate use as directed by the governing board.

Total revenue would be split between county entities and city entities at the existing 1996 proportion, with the cities getting the University of North Dakota medical center share.

Counties would be divided into seven population groupings, each with a fixed percentage of the county allocation. Cities would be similarly divided into seven groups. Within the groupings, the revenue would be allocated strictly by relative population.

House Bill No. 1019 was enacted with a delayed effective date to minimize the impact of the new formula on the 1997-99 state budget and went into effect on January 1, 1999. A representative of the North Dakota Association of Counties testified that so far the restructured formula has been successful. Sales tax revenues were sufficient to ensure that all counties received more funding under the new program than they had received under the old program. Testimony indicated that local governments should be responsible for proposing adjustments after the 2000 census to reflect the population changes but to minimize the adverse impact to those jurisdictions that are losing population.

Conclusion

The commission makes no recommendation with respect to its review of revenue sharing and personal property tax replacement.

E-COMMERCE TAXATION

The commission received a report on the status of taxing of e-commerce. Representatives of local governments expressed concern to the commission regarding revenue issues associated with remote sales, and specifically, the growing inequity and the need to have state and local sales taxes available to pay for essential services.

Testimony was received from the Tax Commissioner regarding the status of state and federal law regarding the collection of sales and use taxes from remote sellers, which includes e-commerce and catalog sales. In 1998 Congress passed the Internet Tax Freedom Act, which placed a three-year moratorium on Internet taxes. The Advisory Commission on Electronic Commerce, which was formed under the Internet Tax Freedom Act, has requested a five-year extension on this moratorium.

Conclusion

The commission makes no recommendation with respect to its review of e-commerce taxation.

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies. House Concurrent Resolution No. 3055 directed a study of the extent of and remedies for damage caused to landowners from depredation by big animals, waterfowl, and turkeys and damage caused to property by hunters. By directive of the Legislative Council, the study was expanded to include damage caused to landowners by all game and nongame animals. House Concurrent Resolution No. 3045 directed a study of grain credit sale contracts to determine the need to provide protection for farmers against grain warehouse and grain buyer insolvency. Section 1 of Senate Bill No. 2356 directed a study of the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agricultural producers. In addition to its assigned studies, the Legislative Council designated the committee as the interim committee to receive reports as required under North Dakota Century (NDCC) Section 4-05.1-19 from the State Board of Agricultural Research and Education on the board's annual evaluation of research activities and expenditures and to receive periodic reports from the board as required by 1999 S.L., ch. 21, § 13, on the board's activities associated with researching and developing market opportunities for biotechnologically enhanced crops.

Committee members were Representatives John M. Warner (Chairman), James Boehm, Michael D. Brandenburg, Thomas T. Brusegaard, April Fairfield, Rod Froelich, Lyle Hanson, Dale L. Heneger (until his death on September 6, 1999), Gil Herbel, Keith A. Kempenich, James Kerzman, Ed Lloyd, Shirley Meyer, Phillip Mueller, Jon O. Nelson, Eugene Nicholas, Robert E. Nowatzki, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt, and Ray H. Wikenheiser and Senators Bill L. Bowman, Meyer Kinnoin, Herb Urlacher, and Terry M. Wanzek.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

WILD GAME AND HUNTER DAMAGE STUDY

House Concurrent Resolution No. 3055 directed the Legislative Council to study the extent and remedies for damage caused to landowners from depredation from big game animals, waterfowl, and turkeys and damage caused to property by hunters. The Legislative Council chairman expanded the study to include damages caused to landowners by all game and nongame wild animals. This study was divided into two areas of damage—damage caused by wild animals and damage caused by hunters. The wild animals studied by the

committee included deer, waterfowl, turkeys, blackbirds, coyotes, and prairie dogs.

Damage Caused by Deer

Under NDCC Section 20.1-01-02(4), "big game" means deer, moose, elk, big horn sheep, mountain goats, and antelope. The committee focused on the damage caused by deer due to the relatively large number of deer throughout the state. The main damage caused by deer is damage to haystacks during severe winters.

In the early history of the United States, it was commonly held that wild game belonged to the people and could be hunted at any time. This philosophy virtually decimated deer and elk populations—at one time there were approximately 6,000 deer in North Dakota. This state now has a hunting season for deer. Combined statistics for bow and gun season show a little over 100,000 permits are issued for deer. With a success rate of approximately 80 percent, over 80,000 deer are harvested each year. In addition, there are hunting seasons for elk, moose, and antelope. The number of permits issued for these species is much lower than for deer. In 1997, 127 permits or licenses were issued for elk, 145 for moose, and 520 for antelope. In 1997 the success rate for these species was 73 percent for elk, 81 percent for moose, and 76 percent for antelope.

Under NDCC Section 20.1-02-05(19), the director of the state Game and Fish Department may carry out a private land habitat and access improvement program that includes carrying out practices that will alleviate depredation caused by big game animals. Under Section 20.1-02-05(18), funding for the private land habitat and access improvement program is provided from the interest earned on the game and fish fund and habitat restoration stamp fees which is placed in the land habitat and deer depredation fund. In 1999 the Legislative Assembly appropriated \$2,703,224 for land habitat and deer depredation. Up to \$2.5 million of this amount is from the land habitat and deer depredation fund and is to be used for the purposes of leasing privately owned lands for wildlife habitat to reestablish wildlife populations, to improve wildlife habitat on private lands, and to alleviate big game and fur-bearer depredation. Deer depredation expenditures were \$255,139 for the 1991-93 biennium, \$576,515 for the 1993-95 biennium, \$1,123,107 for the 1995-97 biennium, and \$170,445 for the 1997-99 biennium.

The management philosophy of the Game and Fish Department is to balance the interest of hunters and landowners to sustain a level of deer which provides hunting opportunities and does not provide a financial hardship on landowners. The deer depredation fund provides moneys for activities used to alleviate or minimize damage caused to private livestock feed supplies

by deer. The department does not provide damage compensation through monetary payments, nor does it provide depredation hunting permits. Department policy is to prevent depredation through short- and long-term assistance. Short-term assistance includes cracker shells, blood meal and other repellents, propane cannons, snow fence for wrapping haystacks, and intercept feeding sites. The department avoids feeding wildlife because this trains deer to concentrate in the feeding areas. Long-term assistance is provided through the deerproof hay yard program that provides materials and supplies for the establishment of deerproof hay yards in or around private farmsteads with chronic deer problems.

Depredation problems are not continuous, but are dependent on the weather. The committee was informed that overpopulation intensifies depredation problems; however, there would be depredation complaints if there were very few deer in this state, under the right circumstances. In short, lowering the deer population will not eradicate depredation caused by deer.

North Dakota's Deerproof Hay Yard Program

The deerproof hay yard program is a cooperative effort that requires the labor of the landowner and materials from the Game and Fish Department. There is \$300,000 set aside in the Game and Fish Department budget for the deerproof hay yard program. The average cost for the materials used in the deerproof hay yard program is \$1,600. The focus of the deerproof hay yard program is protection of the winter feed supply for livestock. Entry into the program is voluntary and requests from landowners are prioritized based upon need. The determination of need includes a documented history of depredation.

Landowners who enter the deerproof hay yard program must sign a contract not to charge for hunting for the next 15 years. Some public access must be allowed under the contract because the contract requires "reasonable public access" for deer hunting. If a landowner violates this agreement, the contract contains a schedule of depreciation for the fence, and the rancher must pay for the depreciated value of the fence. The committee was informed that no one has ever had to pay for the materials provided by the Game and Fish Department or has opted out of a contract; however, the principle of being against governmental interference with property rights keeps some people from signing contracts.

The committee was informed by one landowner that the landowner's ranch is located next to public land and deer and antelope come from the public land, eat his alfalfa during the summer, and return to the public land during the fall and winter. The deerproof hay yard program does not help the landowner in this situation.

Committee discussion indicated the deerproof hay yard program works well at protecting the feed supply,

but it is not used to its full extent because some landowners do not use the deerproof hay yard program because of the 15-year limitation. More landowners might use the program if there were no limitations placed on the use of the land for receiving fencing materials. In addition, some believe landowners who have suffered a financial loss should be provided assistance without being limited for 15 years or having to pay for the materials at a later time.

The committee considered a bill draft that prohibited the Game and Fish Department from discriminating against or penalizing a landowner in the deerproof hay yard program for entering a hunting for compensation agreement in the future. The idea for the bill draft came from complaints that if the Game and Fish Department's deer eat hay owned by a landowner, the Game and Fish Department should pay to protect that hay. As such, the deerproof hay yard program should not prohibit fee hunting. The committee was informed the Game and Fish Department presents the contract to landowners after delivering the materials to build the hay yard, and landowners did not appreciate this tactic. In addition, the Game and Fish Department treats the materials as a gift. In short, it was contended this is a control issue and the Game and Fish Department wants too much control over others' land.

A representative of the Game and Fish Department provided testimony in opposition to the bill draft. The contract for the deerproof hay yard program does not allow fee hunting because sportsmen's dollars pay for the supplies used for the hay yard. The department's position is that it would not be fair for a landowner to actively promote deer on the landowner's land and get a free fence to keep those deer away from the landowner's hay or feed.

A representative from the Stockmen's Association provided testimony in support of the bill draft. The position of that organization is that the problem is that the property of the state (deer) is causing damage to the property of ranchers, yet the Game and Fish Department requires ranchers to sign an agreement to take care of the Game and Fish Department's problem. The program is not a high-cost program, and farm families need opportunities to find extra income from on-farm sources. There are few risks to hunters in the bill draft because very few ranchers are involved in fee hunting and very few ranchers do not allow any hunting. The long-term lease for the deerproof hay yard program scares off some landowners even if they do not have fee hunting or plan on fee hunting in the future. In short, it would be worth the good will gained between the state and landowners to remove the payback provisions.

Ranchers testified that smaller farm and ranch operations may need a subsidy to build a deerproof hay yard even if a fee is received for hunting.

Committee members discussed the philosophical difference between deer being owned by the public or being a part of nature. One view expressed is that the

damage caused by deer is not the same as damage caused by cattle but is more like damage caused by wind or hail. In addition, farmers and ranchers bear some responsibility for the wildlife on their property.

Committee members supported a solution in the middle ground between the Game and Fish Department contract and the bill draft. It was noted there are situations in which a landowner may have a fee hunting operation on one portion of the landowner's land and have a depredation problem on another.

Hunting Season Changes to Control Deer Depredation

In Iowa, a producer who has crop losses or potential crop losses in excess of \$1,500 in one growing season is eligible for a depredation management plan through the Wildlife Bureau. The plan may include preventive measures including pyrotechnics and cannons, guard dogs, temporary fencing, more hunters, an increased take of antlerless deer, and other measures.

There are two types of deer depredation permits--a deer depredation license or a deer shooting permit. The deer depredation license is issued to a producer of the crop, and the producer is allowed to designate any hunter to the Wildlife Bureau as having permission to purchase a license for the producer's land. A depredation license may only be used to shoot an antlerless deer. Other states, including Arizona, Idaho, Utah, and Virginia, have depredation hunts. A deer shooting permit may be obtained if damage cannot be controlled by hunting during the regular hunting season. This permit is issued directly to the producer who may shoot as many deer as needed up to the number specified in the permit.

The Game and Fish Department proposed a January 1977 hunt for deer as a depredation hunt. The idea was withdrawn because of the number of complaints. The complaints centered on the idea that shooting deer on haystacks is unsportsmanlike. In addition, a depredation season may cause the deer congregated in one area to disperse to another area, thereby merely transferring the problem to that area. Although there have not been specific depredation hunts in this state, seasons have been extended in the past when weather has prevented hunting during the regular season. The committee was informed that a permanent extended deer hunting season has not been popular with agricultural groups. The present 16½-day season is a compromise between landowners and hunters.

Committee members discussed a suggestion for a special late hunting season after the regular hunting season for shooting deer causing depredation. The hunters with unfilled tags from the regular season would be qualified to use them during the special season.

Allowing hunters with unfilled tags to hunt in a late season was seen as rewarding hunters for not hunting during the regular season which may create a larger

problem than deer depredation. In addition, a late season raises issues of whether the license would be good statewide or only in specific areas where there is depredation and identification problems of whether a deer is a buck or doe if in an especially late season.

Forms of Compensation for Deer Depredation

The committee received testimony on game farms. There is considerable flexibility for individuals who operate game farms. The operation of a game farm falls outside most of the limits imposed by the Game and Fish Department because game farms stock game, and the department cannot spend money on property that is used for commercial hunting. Game farms must pay a nominal fee and perform some recordkeeping to be licensed.

The committee received testimony from ranchers concerning fee hunting. Fee hunting has become more popular as a secondary source of income. Fee-hunting operations follow the same rules as any hunter would follow because fee-hunting arrangements use wild game within the designated season. Fee hunting has no requirement for the operator to be licensed or for there to be any recordkeeping.

The committee received testimony on a pamphlet entitled *Hunting for Habitat: A Practical Guide to State-Landowner Partnerships* published by the Political Economy Research Center in Bozeman, Montana. The pamphlet offers information on ranching for wildlife programs and other similar programs that allow landowners to have control over hunting permits and thereby profit from selling those permits.

Ranching for wildlife is a managed program in eight states based on cooperative agreements between landowners and state wildlife agencies. The program encourages landowners to invest time, money, and resources to increase wildlife and hunting opportunities on their properties. In return, the state modifies hunting regulations so landowners can benefit from fee hunting. Ranching for wildlife gives landowners incentives to earn a profit from hunting through longer seasons, transferable game tags, and ranch-specific harvests. Ranching for wildlife opens opportunities for state agencies through more precise management of game, more leverage with landowners, and greater agency savings. New opportunities for sportsmen are offered through better hunting, longer seasons, and another source of a hunting license. These programs are controversial, however, because they involve fee hunting.

Colorado's program, Ranching for Wildlife, can be used to generally describe the program. In Colorado, the landowner is eligible for transferable game tags, extended seasons, and flexible bag limits. The landowner must produce a wildlife management plan that includes proposed harvest levels and a schedule of habitat improvements. A participating landowner pays the same price for tags as does a hunter purchasing a

tag from the state. Colorado has high prices for a hunt in the program which can be attributed to the fact that Colorado limits the number of ranches allowed in the program to 30, requires there to be at least 12,000 contiguous acres in a ranch for it to be considered for the program, and requires landowners to provide access at no charge to a limited number of hunters whose names are drawn by lottery.

New Mexico's program is different from other states' programs because it does not require the landowner to develop a wildlife management plan. The allocation of authorizations to landowners is based on animal populations alone. This discourages ranch-specific management, and there are elk depredation problems that remain in certain parts of the state. The allocation formula funnels numerous authorizations to a few larger ranches, and smaller ranches receive fewer authorizations even though they may be suffering more depredation. A landowner in New Mexico must allow access to a number of hunters selected by lottery who hunt for free. The program does not require that a property be a minimum size.

The main benefit to landowners under a ranching for wildlife program is the issuance of transferable tags that the landowner may sell for cash. Ranching for wildlife would provide an income to cover the expenses of depredation.

Committee discussion pointed out that the problem with deer depredation is that deer group together when there is severe weather that has decreased the food source for deer. When this happens, deer tend to congregate around feed stored by ranchers. This problem occurs after the regular hunting season. Hunting season changes, like those in ranching for wildlife programs, will not affect the problem of deer depredation. In addition, landowners are able to manage wildlife and to charge a fee for hunting, which fulfills the goals of a ranching for wildlife program without adopting the program.

The committee received testimony on using the sale of gratis tags as secondary income for landowners. A concern with the sale of gratis tags is that less land will be available for public hunting. Most landowners--at one time 85 percent--allow some free hunting; however, hunting is limited where there is a high concentration of game. In addition, 10 percent of the land in North Dakota is public land open to public hunting.

The committee was informed that ranchers consider a gratis tag as a courtesy to the landowner for owning land and the landowner should be able to decide how to use that gift. In particular, all gratis tags should be allowed to be sold or transferred by the landowner to a resident or a nonresident hunter. This would allow ranchers to sell their gratis tags to cover the cost of depredation problems. A suggestion was made that ranchers should be allowed to receive gratis tags based on the acres owned and should be allowed to sell tags. Adjustments could be made based upon the wildlife

population. The wildlife population could be determined by surveys by the Game and Fish Department and by working with landowners.

In Wisconsin, a fund has been established to pay for wildlife damage control. The fund is supplied with money derived from all special deer licenses and a \$1 surcharge placed on every hunting license. The fund is used to pay for fences, for technical assistance, and claims to farmers who allow hunting and work with wildlife biologists. The fund works somewhat like an insurance policy. A property owner is not eligible for damage assistance until after \$250 of damage has occurred. The damages that the state will pay are limited to \$5,000. The property owner must permit hunting of the animals causing wildlife damage on the land where wildlife damage occurred and on contiguous land under the same ownership and control.

Other states, including Idaho, Massachusetts, Nevada, New Hampshire, Utah, Vermont, Washington, Wisconsin, and Wyoming, have monetary compensation for wildlife crop damage. In Idaho, the state may offer financial compensation for crop damage over \$1,000 which is not covered by other sources. In Vermont, reimbursement may be available to landowners whose land is not posted against hunting and who have suffered damage to crops by deer. In Washington, the claim may not exceed \$2,000.

The committee received testimony on direct compensation for damage caused by wild animals, in particular, deer. It was argued that landowners should have the right to protect their property or be compensated for damage to it. In addition, the committee was urged to consider requiring the Game and Fish Department to enter an insurance program to insure depredation costs.

Committee members pointed out that who should pay for damage caused by big game is a theoretical question based on whether the damage is caused by an act of God or by an act of the state. Because depredation appears to happen in high concentrations in distinct areas, the Game and Fish Department could agree with landowners in those areas to pay for the feed these animals eat in return for allowing hunting.

Damage Caused by Waterfowl

Under NDCC Section 20.1-01-02(42), "waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots. The committee focused on damage caused by what are commonly known as geese because of their relatively high numbers in this state.

Most of the spring and summer damage is caused by the rising numbers of resident Canadian geese. The problem geese are the resident breeding pairs that hatch four to seven goslings each spring. Starting in June, the adults begin molting their flight feathers rendering them flightless and the goslings are pre-fledged. The adults and goslings seek out larger, more secure wetlands. This explains why a wetland can have hundreds of birds

present that were not there during the nesting season. Flocks can range from 50 to 400 birds that must walk from the water onto surrounding crop fields to feed. The damage they impose can accumulate very quickly. Soybeans are preferred due to their high protein content. Another group of geese that cause damage, but to a lesser degree, are nonbreeding birds. Nonbreeding birds travel in bands of 10 to 100 birds and may decimate sprouting crops. Although nonbreeding birds may be deterred with simple frightening techniques including flags and propane cannons, flightless birds are more difficult to scare.

According to the Game and Fish Department, one method that works with young goslings is to create vegetative buffer strips surrounding sloughs in cropland. The vegetative buffer strip acts as a fence. Another method for reducing resident bird numbers is to have an early September hunt. The Game and Fish Department recently allowed a September goose season for this purpose. South Dakota and Minnesota have had September seasons in recent years as well. This state has had three goose hunting seasons--spring, early September, and regular.

All waterfowl abatement programs in the state are conducted by the United States Department of Agriculture's Division of Wildlife Services (previously called Animal Damage Control). Under NDCC Section 20.1-02-05(15), the director of the Game and Fish Department may cooperate with the Commissioner of Agriculture, the United States Fish and Wildlife Service, and other agencies in the destruction of destructive birds. In 1999 the Legislative Assembly appropriated \$100,000 from the game and fish fund for the purpose of providing grants to the Division of Wildlife Services for projects to alleviate wildlife depredation and damage. Projects funded may include projects to alleviate waterfowl depredation and damage and must be approved by the director of the Game and Fish Department. The 1999-2001 biennium is the first biennium in which Wildlife Services has been a line item in the Game and Fish budget. In the past, grants have been made to the Division of Wildlife Services; however, for at least the last 20 years no grant has been used for the alleviation of waterfowl depredation. The moneys have been used for other depredation and damage control, including the killing of predators. For example, the money has been used for matching dollars for cooperative projects to alleviate or minimize damage to private livestock caused by coyotes.

Under NDCC Section 4-01-17.1, the Agriculture Commissioner may cooperate with the United States Department of Agriculture and other appropriate federal agencies in the control and destruction of small game causing crop damage or substantial economic loss. This control and destruction must be approved by the director of the Game and Fish Department. The North Dakota Agriculture Department has received an appropriation for

the last two bienniums of \$779,694 for cooperative projects with the Division of Wildlife Services.

The following tables were obtained from the Division of Wildlife Services and list the damage caused by waterfowl as verified through investigations based upon complaints and the amounts spent for the management of waterfowl to prevent crop damage.

Extent of Waterfowl Damage to Crops		
Year	Number of Investigations	Verified Damage
1995	93	\$45,700
1996	50	\$26,700
1997	25	\$43,000
1998	45	\$44,700

Funds Expended for the Management of Waterfowl Damage to Crops	
Year	Amount
1995	\$958
1996	\$1,387
1997	\$2,987
1998	\$3,530

It is important to note that in fiscal year 1998 the Division of Wildlife Services spent \$89,665 that it received from the North Dakota Agriculture Department for crop damage programs. In fiscal year 1998, Wildlife Services did not receive any North Dakota Game and Fish Department money for crop damage but did receive \$18,588 for damage caused to livestock.

Other states have extensive programs to deal with waterfowl abatement. South Dakota has its own waterfowl depredation abatement program because the Division of Wildlife Services has no presence in that state. South Dakota collects a \$5 surcharge for all adult hunting licenses. This money is earmarked one-half for hunter access programs and the other half for depredation programs. This surcharge collects between \$800,000 to \$1 million for all depredation programs.

South Dakota has evaluated a number of depredation management techniques as they relate to waterfowl. According to a representative from the South Dakota Department of Game, Fish, and Parks, there are definite methods that work and are cost-effective. A major part of South Dakota's waterfowl abatement program relates to resident geese. Throughout the summer, the South Dakota program receives between 100 and 200 complaints of depredation by resident geese. The South Dakota Department of Game, Fish, and Parks has a number of remedies and programs for resident goose depredation.

One program is the food plot program area. This program provides payments to landowners for depredation done to crops in the field. In this program, the landowner allows the geese to eat the cash crops planted by the landowner and receives a cash payment from the Department of Game, Fish, and Parks. The payment per acre is based on the appraised value of the land per

acre multiplied by the Farm Services Agency multiplier used to determine rental value as a percentage of value plus \$25 per acre for production costs. The department also places electrified fences around sloughs that contain goslings and adult molting birds. The department also places lathes around sloughs with mylar reflective tape or survey flags attached to scare geese from entering fields. In addition, the department uses scare kites--bird of prey kites on the end of a string attached to a 10-foot pole. The department also has used woven wire around sloughs and has made public land adjacent to private land more attractive to divert geese from the private land. All these methods appear to be effective in different circumstances.

Testimony and Committee Discussion on Nonresident Goose Hunting Licenses

One way to lessen goose depredation problems is by increasing the hunting of geese by nonresident hunters. Nonresident waterfowl licenses have increased from under 5,000 hunters in 1988 to almost 20,000 hunters in 1998. A nonresident waterfowl hunter must have a nonresident fishing, hunting, and fur-bearers certificate that costs \$2, a federal migratory bird stamp that costs \$15, and a nonresident waterfowl license that costs \$93. The license is good for both waterfowl and upland game. A nonresident has three options for fall waterfowl licenses:

1. A 14-day license restricted to zones.
2. A license for two 7-day periods restricted to zones; however, a separate zone may be chosen for each seven-day period.
3. A seven-day statewide license with no zone restrictions.

The committee reviewed legislation relating to nonresident goose hunting licenses. Much of the legislative history as it relates to the arguments for and against having more or fewer nonresident hunters has remained the same throughout the years. The main division is between individuals who do not want nonresidents leasing large tracts of land, thereby preventing residents from hunting, and individuals in the hospitality and service industries who want nonresident hunters to come to their communities and spend money on services. The conflict is between in-state goose hunters and local merchants and service providers. The confrontation between these groups has lessened, and the legislative history for House Bill No. 1459 (1999), which allowed a nonresident waterfowl hunter to purchase a license that is valid for seven consecutive days and is valid statewide, did not reveal any opposition to the bill.

The committee was informed that because geese are arriving later than usual from Canada this year, nonresident hunters are having to leave the state without being able to hunt because they are limited to hunting a total of 14 days. The number of days allowed for nonresident goose hunting is statutory. The limitation was enacted when there was low water in Devils Lake and that area

was a major staging area. The original purpose of the limitation has lost some of its validity because the state has abundant water.

Committee discussion pointed out that the 14-day limit on goose hunting creates a problem if there are no geese in the state at the time out-of-state hunters arrive to go hunting. A solution could be an extension for a particular hunter if there is no opportunity to hunt. An ad hoc determination of the opportunity to hunt, however, would be administratively burdensome. Committee members also pointed out that most goose hunters are nonresidents who come to this state because of the high number of geese, and most farmers want more waterfowl hunting to decrease depredation.

Damage Caused by Turkeys

Although the number of turkeys in this state is relatively low, the state Game and Fish Department still receives a small number of complaints--under five--of damage being caused by turkeys each year. The main complaint received is of turkeys eating and defecating on feed piles.

In response to complaints received on turkey damage, the department does offer technical assistance and has trapped and moved turkeys when appropriate. In South Dakota, the Department of Game, Fish, and Parks uses scare kites to repel turkeys.

This state does allow the hunting of turkeys; however, this state does not have a nonresident turkey license. According to the Game and Fish Department, there are numerous resident applicants for each turkey permit. The number of fall turkey permits has increased from under 1,000 for all years before 1980 to a high of 5,938 in 1988. In 1997, 3,273 fall permits were issued. The number of spring turkey permits has increased from under 1,000 for all years before 1990 to a high of 1,807 in 1993. In 1998 the total was 1,695. The total number of turkeys in this state has fluctuated between 6,000 and 10,000 birds over the last 10 years.

Committee discussion indicated a good solution for turkey depredation would be to allow the sale of gratis tags. Increasing the number of gratis licenses may not provide much of a solution to the damage being done by turkeys; however, the sale of those licenses would compensate the landowner for the damage done.

Damage Caused by Blackbirds

A representative of the Animal and Plant Health Inspection Service, Division of Wildlife Services, United States Department of Agriculture, provided testimony on federal programs to alleviate depredation, including that done by blackbirds. In the mid-1980s, the Division of Wildlife Services began dealing with blackbirds and waterfowl. In 1999 the Division of Wildlife Services began a study on the chemical baiting of blackbirds by using DRC1339 applied to rice that is scattered in sunflower fields in a selected 40-township area. The

The committee recommends Senate Bill No. 2025 to prohibit the Game and Fish Department from discriminating against or penalizing a landowner in the deerproof hay yard program for entering a hunting for compensation agreement.

CREDIT-SALE CONTRACT PROTECTION FOR FARMERS STUDY

House Concurrent Resolution No. 3045 directed the Legislative Council to study grain credit-sale contracts to determine the need to provide protection for farmers against grain warehouse and grain buyer insolvency.

Credit-Sale Contracts

Under state law, there are three basic types of grain transactions—cash sales, warehouse receipts, and credit sales. Cash sales involve transactions in which farmers sell their grain to an elevator or a grain buyer in exchange for cash. Farmers have up to 30 days to decide what they want to do with their grain, so the decision to sell for cash may come sometime after the grain is delivered. Warehouse receipts involve transactions in which the farmer decides to store the grain in the warehouse. The farmer continues to hold title to the grain and pays the elevator a storage fee. The farmer may eventually sell the grain to the warehouse or take redelivery. A credit-sale contract is a sale in which the selling price is to be paid more than 30 days after the grain is delivered or released for sale. There are two main types of credit-sale contracts—delayed price and deferred payment. Under a delayed price contract, no price is established at the time of transfer of title of the grain from the farmer to the elevator. The farmer has the option to price the grain as per the market during a period of time contained in the contract. The typical length of this time is 100 to 240 days; however, it could be any period of time. Under a deferred payment contract, title to grain passes from the farmer to the elevator and the price is set; however, the elevator does not pay for the grain immediately. Generally, a deferred payment contract is used for income tax planning purposes.

According to the Public Service Commission, there has been a substantial increase in the use of credit-sale instruments in recent years. Although a formal survey has not been completed, it is assumed that credit-sale contracts have risen from less than 10 percent of the industry's sales volume to between 40 and 60 percent. Much of this increase is related to the rail transportation system. Warehouses need to hold title to grain so they can have grain on hand to make use of rail transportation that has been purchased up to six months in advance under car auction programs. Whatever the reason for the increase in popularity of credit-sale contracts, the increase has increased the risk to farmers who sell their grain to a warehouse on a credit-sale contract. Because there is no bond protection for a

credit-sale contract, the farmer is treated as an unsecured creditor if the warehouse becomes insolvent.

History of Protections in North Dakota Grain Warehouses

A grain warehouse can elect to be licensed by federal or state authorities. The federal government regulates grain warehouses under the United States Warehouse Act, 7 U.S.C., 241-273, which is administered by the United States Department of Agriculture. With respect to a grain warehouse licensed by federal authorities, matters regulated by the Act cannot be regulated by the state. Licensing under the Act is voluntary and may be accomplished by applying and qualifying. A grain warehouse licensed under the federal Act must meet requirements for sound warehouse operations, i.e., furnish an acceptable bond, maintain a minimum net worth, and pay inspection and licensing fees. In lieu of a bond, a warehouse may file a certificate of participation in and coverage by an indemnity or insurance fund, approved by the Secretary of Agriculture, and established, maintained, and backed by the full faith and credit of the applicable state.

North Dakota Century Code Chapter 60-02 regulates grain and seed warehouses. Sections 60-02-02 and 60-02-03 set out duties and powers of the Public Service Commission in regulating grain and seed warehouses. In addition to other prescribed duties, the commission is to exercise general supervision of public warehouses. Section 60-02-09 contains bond requirements, which must be met before issuance of a public warehouseman's license. The bond must be in a sum of not less than \$5,000 for any one warehouse (with the actual amount determined by the commission) and must be for the specific purposes of protecting holders of outstanding receipts and covering the costs incurred by the commission in the event of the licensee's insolvency. This section specifically exempts credit-sale contracts from bond coverage; however, under Section 60-02-19.1, specific terms and procedures are required to be used in a credit-sale contract.

Early in 1998, the United States Department of Agriculture informed the Public Service Commission that the commission cannot require federally licensed warehouses to obtain a state license for merchandising and warehousing grain. The United States Warehouse Act states that "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect." Courts have consistently held that federal law preempts state law, and a federally licensed facility is not required to have a state license to conduct its warehousing activities. It is less clear whether federal law preempts state law in the merchandising functions of warehouses; however, there is no explicit court decision as to this matter. Unlike many states, North Dakota

required public grain warehousemen to obtain one license rather than two—one to govern merchandising and one to cover warehousing. The North Dakota license entitled them to conduct both merchandising and warehousing activities. In 1999, however, the Legislative Assembly through Senate Bill No. 2153 changed the law so that this state has a dual licensing procedure.

Roving Grain Buyers

Before August 1, 1999, NDCC Chapter 60-03 applied to roving grain or hay buyers, but now it applies to hay buyers only. Roving grain buyers are now licensed under NDCC Chapter 60-02.1, as described under **1999 Legislation**. Under Section 60-03-01(5), a hay buyer is a person who is in the business of buying hay for resale or processing, or is a person who markets hay on behalf of the owner. Licenses for roving hay buyers are issued on an annual basis and may be revoked or suspended for cause. The license of a hay buyer is automatically suspended for failure to have or maintain the required bond.

Under NDCC Section 60-03-04, a licensee is required to be bonded in an amount set by the commission. This section specifically exempts credit-sale contracts from bond coverage; however, under Section 60-03-04.1, a separate bond is required for credit-sale contracts. This bond may not be less than \$100,000. In addition, this section also provides for specific terms and procedures to be used in a credit-sale contract.

Insolvency Proceedings

North Dakota Century Code Chapter 60-04 pertains to insolvent grain warehousemen. The chapter establishes a procedure for the appointment of the Public Service Commission as trustee for an insolvent warehouseman, the establishment of a trust fund containing the assets of the insolvent warehouseman, and the distribution of the assets of the warehouseman to receiptholders. One farmer who is not being paid can force a company into an involuntary insolvency proceeding. In an insolvency proceeding, the Public Service Commission uses the grain on hand and the bond to pay cash and warehouse receipt customers. The bond covers these sales and any extra amount does not go to credit-sales. Farmers with a credit-sale contract are unsecured creditors and have to collect through a bankruptcy proceeding or a private action. Insolvency and bankruptcy proceedings are mutually exclusive.

Receiptholders, within 45 days of the last publication of notice or a longer period if prescribed by the commission, must file claims against the warehouseman. Failure to file a claim within the prescribed time may bar the receiptholder from participation in the distribution of the trust fund. Additionally, receiptholders are barred from bringing separate claims for relief against the warehouseman's bond, insurance proceeds, and other trust assets. However, the receiptholder may seek an action

against the warehouseman for the whole amount owed or any deficiency.

1999 Legislation

In 1999 the Legislative Assembly enacted two bills that related to grain buyers and public warehousemen—Senate Bill No. 2153 and House Bill No. 1156.

Senate Bill No. 2153 removed public warehouses licensed under the United States Warehouse Act from the licensing requirements under NDCC Chapter 60-02. The bill created Chapter 60-02.1, which is similar to Chapter 60-02 but created a merchandising license for facility-based grain buyers which may include the merchandising activities of federally licensed warehouses. The bill also removed the roving grain buyer license provisions from Chapter 60-03 and placed them in this new chapter.

North Dakota Century Code Chapter 60-02.1 requires a licensee to be bonded for the purposes of insolvency in a sum of at least \$5,000 and in an amount as deemed necessary by the commission. The bond does not cover credit-sale contracts. Section 60-02.1-14, relating to credit-sale contracts, provides:

60-02.1-14. Credit-sale contracts. A grain buyer may not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The grain buyer shall maintain an accurate record of all credit-sale contract numbers including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section 60-02.1-15 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer's

license, the payment date for all credit-sale contracts, at the seller's option, must be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the license of the grain buyer is transferred to another grain buyer or licensed warehouseman, credit-sale contracts, if so agreed by the seller and transferee, may be assigned to the transferee.

House Bill No. 1156 provided that if required for United States Department of Agriculture approval of the Public Service Commission's warehouse inspection program, the commission may require an applicant for a public warehouse license to submit a current financial statement. A warehouseman is required to publish and post in a conspicuous place the fees that will be assessed for receiving, storing, processing, or redelivering grain.

Other States' Laws

The committee reviewed Illinois, Minnesota, and Ohio laws on protection to farmers for credit-sale contracts.

The Illinois indemnity fund covers credit-sales and has replaced a bond requirement. Illinois requires 90 percent of the unpaid balance for a price later contract to be held by a grain dealer in grain, rights to grain, or proceeds for the sale of grain.

Minnesota requires a bond; however, the bond only covers cash sales. Protection for credit-sales comes from a requirement, similar to Illinois, for the grain buyer to hold grain, rights to grain, or proceeds for sale of grain totaling 90 percent of an obligation.

Ohio protects credit-sale contracts through an indemnity fund that covers Commodity Credit Corporation grain. Ohio does not require a bond because of the indemnity fund. Ohio has an agricultural commodity depositors' fund that is funded by a per bushel fee remitted by licensed handlers. The fee is adjusted by the Director of Agriculture to keep the fund within statutory limits. If the assets of the fund exceed one-half of the sum of all claims approved during the preceding four years or \$4 million, whichever is greater, the fee is waived. Regular agreements are covered for 100 percent and other grain, including credit-sale grain, is covered for 100 percent for the first \$10,000 and 80 percent for the remaining loss. Ohio has a 90 percent rule similar to Illinois and Minnesota. Ohio has two unique provisions. A producer who sells a commodity to a handler under a delayed-price agreement may demand security for payment in an amount equal to 100 percent of the national loan rate value of the commodity or 75 percent of the average price being paid for the commodity in this state, whichever is less.

Also, it is a felony for not having 90 percent of the rights in commodities as required by the 90 percent rule.

The committee was informed that if an elevator were required to keep 90 percent of the unpaid balance of a credit-sale on hand in cash or grain, it may impact elevators by decreasing their available line of credit.

Possible Solutions

There are at least three methods to address the issue of farmers not being protected in credit-sale transactions. One is to require warehouses to be bonded for credit-sale transactions. A second is to create a state indemnity fund to cover losses in cases of insolvency. A third is to rely on present provisions providing for certain contract provisions and procedures in credit-sale contracts.

Bond Requirements

During hearings on House Bill No. 1156 (1999), two shortcomings of requiring credit-sale bond coverage were discussed. First, not all grain warehousemen would be able to qualify for coverage through bonding companies. Unable to lawfully obtain a license, these warehousemen would be given the choice of operating illegally or losing a substantial portion of their business. Second, the cost of bonding would result in an extremely expensive form of insurance. The cost of coverage would be from five to six cents per bushel.

The bond for a state-licensed facility is based on the physical capacity of the facility. A federally licensed entity must have a grain buyer's license and a bond that is based on volume. State bond levels are set by rule. The committee was informed the Public Service Commission may consider higher bonds for processors because they handle a high volume of grain.

Indemnity Funds

During the 1987-88 interim, the Legislative Council's Agriculture Committee studied the feasibility and desirability of establishing a state bonding fund for those persons who are required by state law to be bonded in order to engage in business activities. By directive, the Legislative Council limited the study to grain warehousemen and livestock auction markets. The study was proposed to consider the establishment of a state bonding fund to address problems created by the escalating costs of obtaining bonds and the decreasing number of companies willing to provide bond coverage. Although the committee made no recommendation concerning the establishment of a state indemnity trust fund or a grain insurance fund, the committee received testimony on action in other states with a focus on Illinois.

Illinois has a program that operates through the use of two separate but interrelated funds--the grain indemnity trust fund and the Illinois grain insurance fund. All grain assets of failed grain warehouses are placed in the

grain indemnity trust fund and all claims are paid from the fund. The Illinois grain insurance fund consists of assessments made against elevators, in lieu of requiring elevators to have bonds. The insurance fund is intended as a supplementary means of payment when the amount of the grain indemnity trust fund is insufficient to pay all claims. Commodity Credit Corporation grain is covered by the indemnity fund. The grain insurance fund is financed by an assessment on each licensed grain dealer and grain warehouseman for a period of three years and then as needed to maintain a fund balance of \$3 million. Each state-licensed grain dealer and grain warehouseman is required to participate in the program. Federally licensed warehouses may participate in the program through the use of a cooperative agreement. The fees assessed against the grain dealers and grain warehousemen are consistent with the current cost of bonds that are required in the grain industry on an annual basis. To generate sufficient initial funding, the assessments were doubled for the first year and for the initial year of each subsequent participant. Any claimant who has suffered a financial loss due to the use of a credit-sale contract is entitled to compensation for 85 percent of the balance claimed up to a maximum of \$100,000 from the fund. A claimant who has a financial loss other than through the use of a credit-sale contract is entitled to compensation for 100 percent of a valid claim.

Representatives of the North Dakota Stockmen's Association, North Dakota Grain Dealers Association, and Public Service Commission opposed the establishment of an indemnity trust fund and insurance fund. They testified that any person or company that is having difficulty obtaining a bond is probably having financial difficulty. They argued that if the state established an indemnity fund and an insurance fund, the state would be required to assume the responsibilities of the surety bond companies with regard to screening applicants to determine whether they have adequate financial capabilities to operate a business. Surety companies will not bond those companies that do not have the necessary financial strength required to operate. Although it would be easier and less expensive for companies to obtain bonds if the bonding requirements were lowered, doing so would decrease the financial protection afforded to producers. Because bond costs are based on risk, healthy companies pay less than a company in financially poor shape. In addition, opposition was expressed because all companies would have been required to pay the same assessment, thus penalizing financially healthy companies.

The committee was informed elevators make decisions based upon sound business judgment, and an indemnity fund would not encourage irresponsibility in elevators by having too many outstanding credit-sale contracts. An indemnity fund may be beneficial to elevators because it may result in a stronger selling point. In fact, at least six elevators voluntarily provide insurance

or bond for credit-sale contracts. One negative for producers is that the producers will pay for the fund.

Present Protections

A review of the adequacy of present provisions of law governing the contract can only be evaluated by a study of whether farmers understand the risks involved with credit-sale contracts and deliberately assume those risks. The actual risk can be measured by the number of warehouse insolvencies. In the last 10 years, there have been fewer than three formal insolvencies but five or six informal insolvencies. An informal insolvency is when the Public Service Commission works with the warehouse, farmer, and bonding company to provide relief for the farmer without a formal insolvency proceeding.

The committee was informed that when someone takes over for an elevator that is in financial trouble, the old obligations are usually assumed as a matter of good business practice. As a result, there do not appear to be many losses for farmers from credit-sale contracts. The committee was informed there is no data to confirm whether companies buying troubled elevators would be less willing to pay outstanding credit-sale contracts to keep the farmers' good will than those companies would have been in the past.

There have been two recent insolvencies in this state. One insolvency involved an unlicensed entity that had no bond coverage. Creditors were paid eight cents on the dollar. A processor in Carrington was insolvent and had a \$100,000 bond. Of the \$700,000 to \$800,000 in claims, one-third were not credit-sales. Creditors are expected to receive up to 90 cents on the dollar returned because of capital provided from Cenex-Harvest States.

A representative of the Public Service Commission provided testimony on the preparation of a brochure that provides information on producers' rights and duties in selling grain. The Public Service Commission will be distributing the pamphlet through the county extension offices, elevators, farm groups, news releases, and the World Wide Web. The brochure includes information on credit-sale contracts.

Conclusion

The committee makes no recommendation regarding its study of grain credit-sale contracts.

MULTISTATE AGRICULTURAL MARKETING COMMISSION STUDY

Senate Bill No. 2356 (1999) directed the Legislative Council to study the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agricultural producers. The bill directed the study of which entities set and control the prices of specific agricultural products, which trade policies assist or hinder the marketing of agricultural commodities, which federal

and state laws assist or hinder the marketing of agricultural commodities, and which federal and state laws assist or hinder the use of agricultural contracts. In addition, the bill directed the study on how this state can work with federal agencies and federal representatives to ensure the best possible climate for the marketing of agricultural products on behalf of this state's producers.

1999 Legislation

As introduced, Senate Bill No. 2356 (1999) would have required the Agriculture Commissioner to organize the formation of a multistate agricultural marketing commission. The duties of the commission would have been the same as the study areas required by this study. The multistate agricultural marketing commission was to be made up of member states represented by members appointed by the Governor of each member state. The commission was to be made up of farmers and legislators with state agriculture commissioners serving in an ex officio capacity. The bill initially appropriated \$1 million for organizing and operating the commission.

The Legislative Assembly approved a number of resolutions urging congressional action. House Concurrent Resolution No. 3009 urged Congress to carefully review the planned merger between Cargill, Inc., and Continental Grain Company and to take any action to minimize potential adverse effects on farmers, ranchers, and consumers. Senate Concurrent Resolution No. 4021 urged Congress to renegotiate the North American Free Trade Agreement. House Concurrent Resolution No. 3037 urged Congress to review the North American Free Trade Agreement and the General Agreement on Tariffs and Trade. House Concurrent Resolution No. 3033 urged Congress to raise the cap on marketing loans available to farmers and to adopt a cost-of-production index adjustment mechanism. Senate Concurrent Resolution No. 4018 urged Congress to address concentration and consolidation in the meat and grain industries so farmers and ranchers can compete fairly and profitably.

Past Bills on Interstate Compacts

At least two bills have been introduced to have this state enter the Interstate Compact on Agricultural Grain Marketing. Both bills failed to pass. The purpose of the compact would be to protect, preserve, and enhance:

1. The economic and general welfare of citizens of the joining states engaged in the production and sale of agricultural grains.
2. The economies and very existence of local communities in the states joining the compact, the economies of which are dependent upon the production and sale of agricultural grains.
3. The continued production of agricultural grains in the states joining the compact in quantities necessary to feed the increasing population of the United States and the world.

In 1989 when the last of these bills, Senate Bill No. 2453, was introduced, five states had joined the compact. It is important to note the multistate agricultural marketing commission proposed in Senate Bill No. 2356 (1999), as introduced, would have created an entity similar to the one the Interstate Compact on Agricultural Grain Marketing would have created. The compact establishes a commission to promote exporting American-produced grain; for example, wheat, durum, oats, rye, corn, barley, buckwheat, flaxseed, safflower, sunflower seed, soybeans, peas, and beans. According to the Council of State Governments, the status of this compact is unclear. Four states—Iowa, Nebraska, New Mexico, and Wyoming—repealed the authorizing legislation between 1995 and 1998. The legislation that repealed the compact also repealed the interstate administrative commission.

There are limitations on what this state and other states can do in marketing agricultural products. Federal law, including trade agreements, can preempt state law and the compact clause of the United States Constitution may be a consideration. Interstate compacts are specifically provided for in the United States Constitution as instruments to establish permanent arrangements among the states. Article I, Section 10, provides, "No state shall, without the consent of Congress . . . enter into any agreement or compact with another state or with a foreign power . . ." It is important to note that the procedures for implementing a compact have developed through usage and court rulings. Under these procedures, congressional consent to a compact is required only for those agreements that affect the political balance within the federal system or that affect the power delegated to the national government. These are agreements that tend to increase the political power of the states at the expense of the federal government. Based on the purely investigational nature of the multistate agricultural marketing commission proposed in Senate Bill No. 2356 (1999) and because the Interstate Compact on Agricultural Grain Marketing did not require congressional consent, it would appear congressional consent would not be required for a group of states to combine energies to promote agricultural products.

Committee members discussed the fact that supply and demand and the value of the American dollar are what affects the market price, and the policy activities of a few states would not have a major impact on the price of commodities. To have a major impact on the market, a number of states would have to create mandatory pools, and this does not appear to be a popular idea.

Past Study on Agriculture Contracts

Vertical integration places suppliers in close relation to manufacturers. This helps spread the risk and save money; however, there is a potential for injury in vertical integration when the players are not of an equal power

base. This can be the case with farmers and major corporations. One way to place farmers and corporations on the same level is through legislation.

During the 1993-94 interim, the Legislative Council's Agriculture Committee studied problems relating to the use of contracts for the sale of agricultural commodities. The committee also reviewed the effects of vertical integration on agribusiness. The committee reviewed basic contract law and the recommendations made by the Minnesota Agricultural Contracts Task Force, which included:

1. Mandatory arbitration or mediation clauses should be required in agricultural contracts.
2. Statutory provisions should require the payment of court costs, attorneys' fees, and double or treble damages to a prevailing party.
3. Parent companies should be made responsible for the unfulfilled contracts of their subsidiaries.
4. Statutory provisions should allow a producer, who has made a large capital investment in buildings and equipment as part of a contract with a processor, to recapture the investment when a contractor terminates or cancels the contract.
5. Contracts should be written in plain language.
6. A covenant or promise of good faith and fair dealing should be part of every agricultural contract.
7. The Minnesota Department of Agriculture should provide an agricultural contracts ombudsman to disseminate information, investigate complaints, and provide or facilitate dispute resolution.

The 1993-94 interim committee recommended House Bill No. 1025 (1995), which failed to pass. The bill would have provided that any party to an agricultural commodity production contract may require all other parties to the contract to participate in mediation through the Agriculture Mediation Service, under rules of the Credit Review Board. In addition, the bill would have imposed liability on a parent entity for the amount of any unpaid claim of a producer resulting from a subsidiary's failure to pay or perform according to the terms of the contract.

The committee received testimony on agricultural contracts. The committee was informed the Antitrust Division of the Attorney General's office is working with a group on protection for producers in production contracts. The group is trying to prevent vertical integration based upon disparate power between large corporations and producers.

State and Federal Laws and Programs

This state has a number of state councils, commissions, and funds with marketing duties. These councils, commissions, and funds include the North Dakota Barley Council, the North Dakota Dry Bean Council, the North

Dakota Beef Commission, the North Dakota Corn Utilization Council, the North Dakota Dairy Promotion Commission, the North Dakota honey promotion fund, the North Dakota Milk Marketing Board, the North Dakota Oilseed Council, the North Dakota Dry Pea and Lentil Council, the North Dakota Potato Council, the North Dakota Soybean Council, the North Dakota turkey promotion fund, and the North Dakota Wheat Commission.

Marketing of Barley by the Barley Council

The North Dakota Barley Council was created by the Legislative Assembly in 1983. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.4. The council's activities and duties are supported by an assessment of 10 mills per bushel collected from barley producers at the point of first sale.

Under NDCC Section 4-10.4-07, the council may contract and cooperate with any person for publicity and promotion of barley. In addition, the council may formulate the general policies and programs of this state with respect to the discovery, promotion, and development of markets and industries for the utilization of barley grown in this state.

The council promotes barley for feed and for malting in the domestic market. The council promotes foreign market development through its affiliation with the United States Grains Council. The United States Grains Council has sent North Dakota barley producers on market promotion missions to foreign countries and has brought foreign buyers to this state. The council takes an active role in participating in the World Trade Organization ministerial meetings and the Free Trade Agreement of the Americas, and in matters decided by the federal government.

Marketing of Dry Beans by the Dry Bean Council

The North Dakota Dry Bean Council was created by the Legislative Assembly in 1977. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.3. The council's activities and duties are supported by an assessment of 10 cents per hundredweight from producers at the first designated handling point.

The council develops domestic markets through increasing interest in edible beans which is directed at school and university food services and at cooking schools in the United States. The council investigates the potential for new foreign trade, provides services important to traditional overseas buyers, and increases worldwide demand for beans as part of its market development program. Under NDCC Section 4-10.3-07, the council may contract and cooperate with any person for the publicity and promotion of edible beans. The council is a member of North Harvest Bean Growers Association, which is a member of the National Dry Bean Council, which carries out foreign market development and promotion and serves as a government liaison; the Northern Crops Institute, which promotes the use of northern grown crops; and the American Dry Bean

Board, which coordinates domestic promotion programs and market and nutrition research.

Marketing of Beef by the Beef Commission

The North Dakota Beef Commission was created by the Legislative Assembly in 1973. Statutory provisions relating to the commission are contained in NDCC Chapter 4-34. With the passage of the federal Beef Promotion and Research Act as part of the 1985 farm bill, the beef checkoff became a nationwide, uniform program at the rate of \$1 per head, including an assessment on imported cattle, beef, and beef products. The Cattlemen's Beef Board receives 50 cents of the assessment. Under Section 4-34-01(2), the purpose of the commission is to support beef promotion and marketing organizations with not less than 50 percent of the assessments collected. Under this section, 25 cents of the assessment goes to the National Cattlemen's Beef Association and the commission keeps 25 cents. The commission promotes domestic demand for beef through information to educators, health professionals, and the media.

The commission promotes beef through advertising, providing retail establishments with literature and displays, and food safety training sessions to food service workers. The North Dakota Beef Commission annually invests \$12,000 in two members on the United States Meat Export Federation. The United States Meat Export Federation works to open foreign markets to red meats from the United States and deals with beef promotion, food safety issues, and trade barriers in foreign countries. According to the 1998 North Dakota Beef Commission annual report, since the checkoff program has been in place, foreign marketing efforts in more than 50 foreign countries have increased United States beef exports to nearly \$3 billion, double the value of the exports in 1988.

The committee received testimony from a representative of the Kansas Cattlemen's Association on a program for producers to profit from every stage in the marketing of beef from producer to consumer. The program requires a computer chip be placed in the ears of cattle so that information can be retained and used to assure quality and increase profitability. Because of the information in the computer chips, ranchers will be able to compare their cattle to other cattle, and ranchers will be able to choose the genetics that are the most profitable. Payment under the program is based on how well a rancher's cattle perform. The program benefits small feedlots as well as ranchers. The program would give small feedlots the ability to counteract lowering profitability due to the concentration of meatpacking facilities.

Marketing of Corn by the Corn Utilization Council

The North Dakota Corn Utilization Council was created by the Legislative Assembly in 1991. Statutory provisions relating to the council are contained in NDCC

Chapter 4-10.6. The council's activities and duties are supported by an assessment at the rate of one-quarter of one percent of the value of a bushel of corn collected by a designated handler until a national corn checkoff is implemented. Under Section 4-10.6-06, the council may contract and cooperate with any person for market maintenance and expansion. The council supports market development through support of the United States Feed Grains Council and the National Corn Growers Association.

Marketing of Dairy Products by the Dairy Promotion Commission

The North Dakota Dairy Promotion Commission was created by the Legislative Assembly in 1959. Statutory provisions relating to the commission are contained in NDCC Chapter 4-27. The commission's activities and duties are supported by an assessment of 10 cents per hundredweight on all milk or milk products produced and sold by a producer at the first dealer or processor.

Under Section 4-27-05, the commission has the duty to plan and carry out dairy products education, public relations, advertising, sales promotion, and other programs for the purposes of promoting the sale and consumption of dairy products both on a state and nationwide basis. In 1993 there was a consolidation among this state's commission and the dairy promotion organizations in South Dakota and Minnesota. The commission supports and contracts with the American Dairy Association/Dairy Council of the Upper Midwest. This organization promotes dairy products through national advertising promotions and through cooperation with national chain restaurants. In North Dakota, there are television and radio advertising, nutritional education programs in schools, and restaurant and grocery store promotions to enhance the consumption of dairy products. According to the 1997-99 North Dakota Dairy Promotion Commission's summary of activities, sales of milk have increased 29 percent since 1984.

Marketing of Honey Through the Honey Promotion Fund

The Agriculture Commissioner administers the honey promotion fund that was created by the Legislative Assembly in 1979. Statutory provisions relating to the fund are contained in NDCC Chapter 4-12.1. Honey promotion is funded by a five cent per colony assessment collected by the North Dakota Department of Agriculture along with beekeepers license fees due on March 1 of each year. As required by Section 4-12.1-07, the North Dakota Beekeepers Association oversees the disbursement of funds for research and promotion activities. Although most funding is used for bee research, some funding is used to supply recipe brochures and honey sticks.

Marketing of Milk by the Milk Marketing Board

The North Dakota Milk Marketing Board was created by the Legislative Assembly in 1967. Statutory provisions relating to the board are contained in NDCC Chapter 4-18.1. The board's activities and duties are supported by an assessment of not more than 14 cents per hundredweight on milk or milk equivalents. The board controls the marketing of milk within the state by establishing a minimum price for Grade A milk to be paid by processors to producers, and the board enforces fair trade practices regulations. In addition, the board establishes minimum wholesale and retail prices for milk.

Marketing of Oilseeds by the Oilseed Council

The North Dakota Oilseed Council was created by the Legislative Assembly in 1977. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.2. The council's activities and duties are supported by an assessment of three cents per hundredweight on all sunflower, safflower, rapeseed or canola, and crambe from oilseed producers at the first point of sale. Flax is assessed at a rate of two cents per bushel. The council may contract and cooperate with any person for publicity and promotion of oilseed. The council contracts with the National Sunflower Association for most services. The National Sunflower Association has a cooperative agreement with the United States Department of Agriculture's Foreign Agricultural Service to conduct foreign market development and promotional activities. These programs are designed to expand United States confection sunflower export opportunities, consumer product awareness, and product utilization. In 1989 these activities took place in China, Germany, Mexico, Northern Europe, Taiwan, and Turkey. Domestically, the council promotes a genetically altered sunflower oil suited for continuous frying operations so as to increase the premium price paid for the oil.

Because of the success confectionery sunflower producers have had in the marketplace without governmental assistance, the committee received testimony on the marketing of sunflowers. The acreage for confectionery sunflowers has increased threefold since 1985. United States farmers produce 90 percent of the confectionery sunflowers in the world market. One-half of the acres for confectionery sunflowers are in North Dakota. The reason the marketing of confectionery sunflowers has been successful for farmers is because farmers control the market. The confectionery sunflower producers have tried to match production with demand, increase demand, have control over their hybrid seed, and contract approximately 70 percent of the acres planted. This produces the higher price. In addition there is less competition from the Europeans as with other agricultural products, because due to trade agreements, the Europeans cannot use production subsidies for confectionery sunflowers. However, the Argentinians are becoming a big competitor, and the cost of production in Argentina is \$3 or \$4 per bushel less.

The difficulties with marketing confectionery sunflowers is that the sunflowers must be of a high quality, and if they are not, business suffers. For the year 2000, there are serious concerns with head rot in North Dakota; however, there is an excellent crop in Kansas this year which can meet the needs of most of the high-quality market. The committee was informed that the overall long-and short-term view for the marketing of confectionery sunflowers is optimistic.

Marketing of Dry Peas and Lentils by the Dry Pea and Lentil Council

The North Dakota Dry Pea and Lentil Council was created by the Legislative Assembly in 1997. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.7. The term dry peas and lentils means the range of pulse crops including lentils, dry peas, chickpeas, and lupins. The council's activities and duties are supported by an assessment of one percent of the net value of dry peas and lentils at the point of the first sale.

Under NDCC Section 4-10.7-07, the council may contract and cooperate with any person for the publicity and promotion of dry peas and lentils. The council has hosted marketing seminars for growers, funded portions of seminars educating the public about growing, feeding, and marketing of pulses, and has hosted a meeting and field tour with the Saskatchewan Pulse Growers to open communications between the groups on areas of potential cooperation. Goals of the council are to work with potential processors to develop new processing facilities in this state and to work with the United States Dry Pea and Lentil Council to increase foreign export markets as well as domestic food and feed consumption.

Marketing of Potatoes by the Potato Council

The North Dakota Potato Council was created by the Legislative Assembly in 1967. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.1. The council's activities and duties are supported by an assessment of three cents per hundredweight imposed upon all potatoes grown in the state or sold to a designated handler. The council may increase the assessment by not more than one-half cent per hundredweight per year until a maximum assessment of four cents per hundredweight is reached. The council provides market information to producers so they may more profitably sell their crops. The council provides advertising promotion for better identification of North Dakota products. Under Section 4-10.1-08, the council may contract and cooperate with any person for the publicity and promotion of potatoes. The council contracts with Red River Valley Potato Growers Association for the promotion, advertising, research, and development of Irish potatoes grown in North Dakota.

Marketing of Soybeans by the Soybean Council

The North Dakota Soybean Council was created by the Legislative Assembly in 1985. Statutory provisions relating to the council are contained in NDCC Chapter 4-10.5. Under the federal Soybean Promotion, Research, and Consumer Information Act of 1991, the checkoff for soybeans is one-half of one percent of the net market price. Under federal law, 50 percent of this revenue is sent from the state to the national soybean effort. The remaining assessment is administered by the council. The council promotes soybean use by providing consumers information on the health benefits of soybeans through local presentations and by public relations and media campaigns.

Marketing of Turkeys Through the Turkey Promotion Fund

The North Dakota turkey promotion fund was created by the Legislative Assembly in 1993. Statutory provisions relating to the turkey promotion fund are contained in NDCC Chapter 4-13.1. The Agriculture Commissioner administers the fund in consultation with the North Dakota Turkey Federation. The funds used to operate turkey promotion activities come from a per turkey checkoff based on the weight of the turkey which is levied at one cent for 18 pounds and under, 1.5 cents for 18.01 to 28 pounds, and 1.75 cents for 28.01 pounds and higher. Key processors collect these checkoff funds, and producers may apply to the commissioner for a refund. Turkey is promoted within the state by providing samples and recipes at events in this state and providing money for the purchase of turkeys for classroom instruction and for radio, television, and magazine advertising.

Marketing of Wheat by the Wheat Commission

The North Dakota Wheat Commission was created by the Legislative Assembly in 1959. Statutory provisions relating to the commission are contained in NDCC Chapter 4-28. Wheat producers finance the commission's efforts through a checkoff of 10 mills per bushel.

Under Section 4-28-06, the commission may foster and promote programs to increase the sale and utilization of wheat at home and abroad. The commission may contract and cooperate with any person for education and publicity. The commission promotes export market development. The commission works cooperatively with the United States Wheat Associates, the Northern Crops Institute and North Dakota State University, and the Wheat Marketing Center. The United States Wheat Associates bring trade delegations from around the world to North Dakota and provide short courses for indepth, hands-on training for the use of wheat and durum. The United States Wheat Associates maintain regular contact with customers in more than 100 countries and have more than 15 overseas locations.

The commission works with the United States Wheat Associates, the Wheat Export Trade Education Committee, the National Association of Wheat Growers, the North Dakota Grain Growers Association, the United States Durum Growers Association, the North Dakota Public Service Commission, and the North Dakota Grain Dealers Association in supporting policies domestically and abroad that allow for fair competition. The commission provided funding for former United States Trade Representative Mickey Kantor to represent wheat interests in trade issues with Canada and the World Trade Organization negotiations in late 1999. Domestically, the commission and its affiliates provide for the promotion of wheat through the education of nutrition, health, fitness, and school food service professionals as well as through media campaigns.

The committee received testimony on the marketing of wheat. The committee reviewed world wheat production, world wheat usage, world wheat stocks, wheat production among major exporters, wheat exports among major exporters, wheat stocks among major exporters, durum production and use in major exporter countries, durum stocks in major exporting countries, regional and national partnerships to expand markets for United States wheat, hard red spring and durum exports, production and disappearance of United States hard red spring wheat, production and disappearance of United States durum, trends in the United States wheat industry, United States export trade policy and programs, and United States wheat priorities for World Trade Organization talks.

The committee was informed there are trade offices for wheat in Asia--Tokyo, Taipei, Hong Kong, Korea, the Philippines, Singapore, and Beijing. Trade offices are the link between what a crop is and what the buyer wants. Trade offices engage in a constant educational process by providing milling and baking schools. Trade offices do trade servicing, i.e., finding out what buyers want. Trade offices also solve problems with shipments.

Marketing of Flour by the Mill and Elevator Association

The North Dakota Mill and Elevator Association promotes agriculture through marketing farm products. The Mill and Elevator Association specializes in the milling of hard red spring wheat and durum. The Mill and Elevator promotes its products in national food and product shows around the country. In addition, the Mill and Elevator Association advertises in major industry magazines. International exposure to the Mill and Elevator comes from tours hosted by the Wheat Commission.

The committee was informed that Mill and Elevator Association's location and contacts combined with the ability to source the highest-quality grain will ensure continued profitability while not competing with value-added facilities within this state. Ninety-five to

ninety-eight percent of the grain received at the Mill and Elevator Association comes from North Dakota. The Mill and Elevator Association uses very little grain off the Minneapolis Grain Exchange.

The committee received testimony on the marketing of durum, spring wheat flour, family flour, and organic flour by the Mill and Elevator Association. In the past, durum products were marketed to large pasta companies. The Mill and Elevator is focusing sales toward smaller pasta companies that buy in bags. The future marketing plan is to expand sales in branded bags. Generally, the marketing of flour has been in smaller amounts over time. For example, Dakota Maid flour was sold in 25- and 50-pound bags in grocery stores throughout North Dakota, but now is sold in 5-, 10-, and 25-pound bags in 11 states. In the future, marketing will focus on large retail chains, and the products will have to offer the consumer speed and convenience.

Organic flour provides unique challenges because different buyers of organic flour have different requirements. Although the mill does not need dedicated facilities, there are different requirements as to the cleanup required before milling organic flour.

Agricultural Products Utilization Commission

The North Dakota Agricultural Products Utilization Commission was created by the Legislative Assembly in 1979. Statutory provisions relating to the commission are contained in NDCC Chapter 4-14.1. The commission administers grant programs to provide assistance for:

1. Developing new uses for agricultural products and byproducts.
2. Seeking more efficient systems of processing and marketing agricultural products and byproducts.
3. Promoting efforts to increase productivity and provide added value to agricultural products.
4. Stimulating and fostering agricultural diversification.
5. Encouraging processing innovations.

Its mission is to create new wealth and jobs through the development of new and expanded uses of North Dakota agricultural products. It accomplishes this mission through four grant programs. Two of these programs relate directly to marketing.

To meet the purposes of marketing, the commission administers a utilization and marketing grant program and a cooperative marketing program. Utilization and marketing grants are used to assist in the development and implementation of a sound marketing plan for North Dakota agricultural products or byproducts. This is accomplished through the financing of marketing feasibility studies, business plans, and test marketing. Proposals that encourage the creation of jobs and industry within the agricultural sector of the state are preferred.

Cooperative marketing grants are targeted for use by groups or individuals who want to work together in a cooperative fashion to look at production, processing, or marketing of agricultural products. Applications for grants that provide an outlet for products that normally have not been marketed through an existing cooperative are given priority. The purpose of these grants is to increase productivity, to provide added value to agricultural products, to stimulate and foster agricultural diversification, and to encourage processing innovations.

North Dakota Department of Agriculture

Marketing Services is a division of the Department of Agriculture, and the principal task of the division is increasing sales of North Dakota agricultural commodities and value-added agricultural products in international, domestic, and local markets through education, promotion, and market enhancement. The division aids companies in obtaining federal grants. In addition, the department is a member of the Mid-America International Agri-Trade Council. Through this council, food and agricultural businesses can apply for reimbursement for export promotion expenses. The United States Department of Agriculture's Federal-State Marketing Improvement program allocates funds through the department as well.

The main activity of the division is the Pride of Dakota program. The program promotes sales of North Dakota products through joint-marketing efforts by member companies. A major activity of the Pride of Dakota program is the holiday showcase events. In addition, the division has developed an Internet mall at www.shopnd.com, providing Pride of Dakota companies an opportunity to advertise throughout the world at a very low cost. The www.shopnd.com program is about a year old and is partly funded by the United States Department of Agriculture.

The committee received testimony on marketing by the department. On the international front, the department has sent representatives to foreign countries to provide information about this state's products. On the domestic front, the department aids companies in this state in participating in trade shows. The department works to promote products, whereas commodity groups focus on commodities. Commodity groups engage in generic promotion of a commodity and cannot focus on one company. The department can focus on one company.

The committee received testimony on the www.shopnd.com program. The committee was informed that sales are modest but have been doubling each month. This increase is due to the increased marketing of the site by focusing on advertisements in in-state publications that are sent to out-of-state addresses.

Northern Crops Institute

The committee held a meeting at the Northern Crops Institute on the campus of North Dakota State University. The Northern Crops Institute conducts educational and technical programs to promote the marketing of northern grown crops by increasing variety-specific demand. The Northern Crops Institute is funded by four states--North Dakota, Minnesota, South Dakota, and Montana. Sixty percent of funding comes from North Dakota.

Marketing Clubs

The committee received testimony on marketing clubs. Marketing clubs are groups promoted by the North Dakota State University Extension Service and the North Dakota Farm Business Management Program. The clubs are meant to become local centers of learning for risk management strategies and marketing. In 1999 the Legislative Assembly made funds available for 20 educational clubs. As of October 1999, there were 25 clubs with 10 to 20 members. Clubs are encouraged to charge a fee to bring in experts on marketing at each meeting.

Federal Farm Program and Domestic Policy

The federal government has a plethora of programs and agencies that deal with marketing. The federal government deals with marketing on an international and national level. As previously noted, some of the councils and commissions in this state send checkoff moneys to the national level as required by federal law. Because of the number of programs and agencies, the committee did not review all federal programs as was done for the programs within this state.

The committee received testimony on federal domestic programs and policy. The committee was informed federal farm policy has not become an emergency because of the good economy resulting in no great opposition to disaster payments. The committee was informed some reasons for the need for disaster payments are that the Export Enhancement program has not been used, and insurance is based on past yields and yields have not been good. The committee received multiple opinions on what should be done with federal farm policy. For 30 years up until 1996, the federal farm policy was that the federal government would give \$4 for wheat no matter what. The issues of cleanliness and quality were not addressed in the federal farm policy, so producers have a mindset that producing more is better. This thinking combined with poor prices has contributed to the present farm crisis. Freedom to farm required a change in thinking. Because of freedom to farm, farmers have become better at marketing because of necessity. The committee was informed that in the long run, American farmers will do better under the present farm policy with no changes if they weather the low prices because other countries cannot do the same.

The committee was informed that because of the World Trade Organization, there needs to be a farm bill that supports farmers in new ways. The new ways may be found by looking at other countries to see what they are doing.

The committee was informed that the conservation reserve program does not make sense in a free trade environment. The conservation reserve program takes land out of production and other countries react by placing more land into production.

International Trade and Trade Policy World Trade Organization and the European Union

The committee received testimony on the World Trade Organization meeting in Seattle. The one issue at the World Trade Organization meeting was to identify an agenda. Although no agenda was agreed upon at the meeting, agriculture will be a key component when an agenda is adopted. The meeting will most likely be repeated in 2001 so as to develop an agenda. The agriculture agreement that the World Trade Organization began in Seattle is scheduled to be completed by 2003; however, implementation of that agreement will take a longer time.

The committee was informed food production is an issue of national security, and countries have an obligation to feed the people within their borders. The challenge to the World Trade Organization is to design a system that allows countries to feed themselves but not overproduce and dump the excess on the world market. The divisive issues in designing such a system were numerous; however, there are three major agricultural issues that will most likely be on the World Trade Organization agenda--genetically modified food, export subsidies and programs, and market access. Genetically modified products are a major issue for a few countries, especially in the European Union; however, genetically modified products are a nonissue for Third World countries. The committee was informed the greatest international problem affecting price is the subsidies provided by the European Union. Producers in this country cannot compete with the European Union without massive subsidies. The problems with Canada affect the price of grain in the amount of \$1 to \$3 per ton. European Union subsidies affect price by approximately \$40 per ton or \$1 per bushel.

Within the Uruguay Round Agreement there is a "peace clause" that allows countries to have time to implement the agreement, and certain trade actions may not be taken until 2003. This is what prohibits the United States from bringing trade actions against countries in the European Union for not implementing its agreement even though the United States has lived up to what this country agreed to in the Uruguay Round Agreement in The Freedom to Farm Act.

A major issue of the Europeans is multifunctionality. Multifunctionality states that low-cost production is not

the only issue in trade, and issues concerning the environment, the beauty of the countryside, and income to producers should be considered as well as price. The European Union's farm policy is a social policy. There are other countries that see price as the only issue. The World Trade Organization has not considered noneconomic issues in the past. Market access is contrary to multifunctionality.

Federal Export Enhancement Program

A major component of the federal government's promotion of international trade used to be the Export Enhancement program. This program helps products produced by United States farmers meet competition from subsidizing countries, especially the European Union. Under the program, the United States Department of Agriculture pays cash to exporters as bonuses, allowing them to sell United States agricultural products in targeted countries at prices below the exporter's costs of acquiring them. Major objectives of the program are to expand United States agricultural exports and to challenge unfair trade practices.

The program helps United States agricultural producers, processors, and exporters gain access to foreign markets. The program makes possible sales of United States agricultural products that would otherwise not have been made due to subsidized prices offered by competitor countries. Commodities eligible under the program initiatives are wheat, wheat flour, rice, frozen poultry, barley, barley malt, table eggs, and vegetable oil.

The United States Department of Agriculture considers four criteria to select the commodities and countries which will best meet the Export Enhancement program's trade policy objectives:

1. **Trade policy effect** - Initiatives should have the potential to further the United States trade policy strategy of opposing competitors' subsidies and other unfair trade practices by displacing other countries' subsidized exports in targeted countries. Targeted countries are those where United States sales have been nonexistent, displaced, reduced, or threatened because of competition from subsidized exports.
2. **Export effect** - Initiatives must demonstrate their potential to develop, expand, or maintain markets for United States agricultural commodities while considering the United States historical market share and long-term commercial relationships. Efforts will be concentrated on export sales of those commodities that would be competitive if other suppliers did not use export subsidies.
3. **Effects on nonsubsidizers** - Individual initiatives will not be approved if they might have

more than a minimal effect on nonsubsidizing exporters in the market.

4. **Subsidy requirements** - The Department of Agriculture compares the subsidy requirements of program initiatives to expected benefits. The overall program level for the program, as well as the amount of bonus awards under individual Export Enhancement program initiatives, will be maintained at the minimum levels necessary to achieve the expected benefits of the program.

All sales under the Export Enhancement program are made by the private sector, not the federal government. Once an invitation is issued, it is up to agricultural exporters to contact prospective buyers in eligible countries and negotiate a sales contract including price, quantity, quality, delivery, and other terms. The sale may be contingent on the United States Department of Agriculture's approval of a bonus. Each prospective exporter submits a bid to the department requesting a subsidy--or bonus--that would allow the sale to take place at the agreed price. The department reviews all bids for the competitiveness of the bonus value requested and compares bids with offers from other United States exporters and sales of competitor countries. The department has the right to reject any or all bids.

Once the department accepts a bid, the exporter and the Commodity Credit Corporation enter an agreement. The bonus is paid to the United States exporter in cash. The corporation determines the bonus payment by multiplying the corporation bonus specified in the agreement by the net quantity of the commodity exported. Once an exporter furnishes the department with evidence the specified commodity has been exported to the target country under the terms of the agreement, the exporter can request payment of the bonus.

The committee was informed the Export Enhancement program will not be used again any time soon. Although funded, the Export Enhancement program is not used because it does not have a significant impact on price and because of the problems it would cause with the European Union.

Committee discussion indicated the Export Enhancement program was very effective when it was first used. The Export Enhancement Program gave the United States a bigger market share and more competition with the European Union and Canada. The Export Enhancement program lessened the amount the United States had in reserves, increased the amount other countries had in reserves, and thereby lowered the amount of grain planted in those countries.

Major Entities Affecting Price Canadian Wheat Board

A recent international issue is the transporting of grain from Canada to the United States. One complaint concerns the pricing practices of the Canadian Wheat

Board which appear to promote Canadian wheat being sold in the United States, thereby lowering the price of wheat in the United States. In late 1998 the General Accounting Office did an independent study of the Canadian Wheat Board's pricing practices. The study confirmed that the lack of price transparency in the Canadian Wheat Board grain marketing activities makes it difficult to assess whether the Canadian Wheat Board's pricing practices are consistent with its international obligations under trade agreements. The Government Accounting Office report also verified the Canadian Wheat Board practices price discrimination, charging different prices to different customers. This pricing practice gives the Canadian Wheat Board greater ability to distort trade. Without accurate information, the United States is unable to determine if imports violate trade agreements or United States trade law. Canada has agreed, however, to reveal the Canadian Wheat Board's pricing methods in a recent trade pact.

According to the study, the Canadian Wheat Board has lowered its initial payment to producers from 90 percent to about 70 to 75 percent of expected final payments. The crux of the dispute between the United States and Canada is that the United States-Canada Free Trade Agreement prohibits sales at less than acquisition cost and Canada considers the initial payment to be acquisition cost. In addition, Canada provides a variety of other direct and indirect subsidies to grain producers, including guarantees of Canadian Wheat Board borrowings, export credit guarantees, net income stabilization, western grain transportation buyout, and government-owned and leased hopper cars.

According to the Canadian Wheat Board web page at www.cwb.ca there are three pillars to the Canadian Wheat Board's history which began in 1935. These pillars are single-desk selling, pooling, and government guarantees. The Canadian Wheat Board is the sole exporter of western Canadian wheat and barley. Instead of competing against one another, Canada's wheat and barley farmers act as one. There is price pooling that guarantees farmers will benefit equally, regardless of when their grain is sold during the crop year. All farmers delivering the same grade of wheat or barley will receive the same return at the end of the crop year. The government guarantees payment by delivering partial payment upon delivery. If returns to the pool exceed the sum of these total payments, farmers receive a final payment. If the returns fall short, the federal government makes up the difference.

Concentration of Grain Facilities

One issue of national concern is the concentration of agricultural wholesaling and marketing entities. According to newspaper reports, there have been a number of gatherings of farmers in response to this concentration, especially the merger between Cargill, Inc., and Continental Grain Company. The United

States Justice Department approved the acquisition on July 8, 1999, provided Cargill, Inc., sells an array of grain and soybean facilities in several states. Cargill, Inc., is the nation's number one grain company. Continental Grain Company is the nation's number two grain company.

According to the Cargill, Inc., web page at www.cargill.com, the grain industry is not heavily consolidated. The combination of Cargill's 243 United States facilities with Continental's 83 United States facilities will represent less than three percent of all grain storage in the United States and six percent of total commercial storage. Based on past history, the combined business would handle about 10 to 13 percent of the United States grain moving to market. In the domestic market, there are very few communities in which Cargill and Continental facilities overlap.

Based on past history, the two companies have handled about 35 percent of United States exports. Cargill states that there is plenty of competition on the international level; that entry barriers to export facilities are very low; and that because of privatization in the foreign markets, the grain trade is a relationship-intensive business of many small sales for many individual purposes in which efficiency remains a vital criteria for success.

The committee was informed that there are two markets for a product—the product market and the geographic market. In the merger of Continental and Cargill, they had a product market share of about 18 percent; however, it was all in one geographic market. Some divestiture was required in certain geographic markets.

The committee was informed that major grain companies are investing outside the United States because the United States market is very mature, and there is no place to invest in this country. Future consolidation will come in South America.

Committee members pointed out that Harvest States has a monopoly on 70 to 80 percent of the purchasing of grain in certain parts of the state. Seventy percent of the durum originating in Canada and coming to the United States is going to Harvest States even though Dakota farmers helped finance Harvest States. The purchase of Canadian grain by Harvest States does not help the American farmer and shareholders in value-added cooperatives.

Concentration of Meatpacking Facilities

According to the Department of Agriculture's National Commission on Small Farms, four packing firms control 80 percent of the beef slaughter. Those firms controlled about 36 percent in 1980. The same is true in pork, where five packers control 55 percent of the industry. In short, four large firms in each sector are slaughtering four out of five beef cattle, three out of four sheep, three out of five hogs, and half of all chickens. According to a

study conducted at the University of Missouri, 95 percent of all chickens are processed under production contracts. Likewise, in grain marketing and processing, the top four firms control 59 percent of port facilities, 62 percent of flour milling, 74 percent of wet corn milling, and 76 percent of corn crushing.

The United States Department of Agriculture has been active in studying the issue of concentration and moving to ensure adequate oversight of current practices as well as enforcement of current law. The Grain Inspection, Packers and Stockyards Administration is investigating packer competition for retail sales in light of record farm to retail price spreads. Another investigation will scrutinize recent plant closings and changes in kill capacity in recent years. In February 1996 the department released a major study on concentration in the red meat packing industry. According to the report:

Those concerned about the effects of concentration and integration focus on their effects on prices and the price discovery process. Firms in a concentrated processing industry may be able to reduce prices paid to suppliers. Some observers fear that increases in vertical integration and coordination may amplify the potential for exercise of market power. Some also expressed concern that large packers may use vertical coordination arrangements as a means of blocking their smaller competitors from sources of supply, or as a mechanism for discriminating against livestock sellers. At the least, vertical coordination agreements reduce the prevalence of open-market transactions, thereby restricting the availability of market information.

Those who believe concentration and integration represent no threat argue that livestock prices are higher due to increased efficiency and lower costs realized by large packers and by vertical coordination agreements. They argue that without the size economies, consumer prices would be higher, livestock prices would be lower, and fewer animals would be sold.

The main conclusion of the study was that quick answers to complex market structure and behavior issues are not available. Steady, sustained monitoring and analysis provide the best opportunity to obtain timely, meaningful information as the industry evolves and market conditions change.

The committee was informed that conventional wisdom states that when there is a concentration of market power, there is collusion. Studies suggest there is no significant price distortion in meatpacking on the meat coming into or the meat going out of meatpacking plants. In the aggregate, studies suggest there is no

effect of the big four meatpackers through captive supply on the market, although there may appear to be an effect of captive supply on local markets. The committee was informed there is competition in the meatpacking industry because of technology and rivalry between the meatpacking firms. However, clarity of the market has been lost because price discovery is difficult with so few buyers.

Antitrust Law as Prevention of Unlawful Concentration

The committee reviewed federal and state antitrust law and reviewed enforcement actions by this state with a focus on agriculture. As for federal antitrust actions, the Department of Justice reviews mergers following a definite procedure--companies with combined sales over a certain threshold must provide the Department of Justice with premerger notification; the department has a limited time to file an action; and the burden of proof is on the Department of Justice. As for state actions, states did not have the laws or resources to challenge agribusiness mergers during the 1980s. This was a time when there was major concentration of agribusinesses. The committee was informed it would be difficult to change what has already been done.

This state works with other states on antitrust matters. There are multistate working groups through the National Association of Attorneys General which work on antitrust matters. The lead state in the group is dependent upon the issue. This state participates with personnel, funding, research, and legal work.

A representative from the Attorney General's office suggested two ways to strengthen antitrust actions in this state. The representative suggested legislation:

1. To create a revolving fund initially funded with \$500,000 to \$1 million for pursuing antitrust actions. The revolving fund could be replenished with attorney's fees won in actions and could be increased by adding civil penalties.
2. To give the Attorney General additional investigative power in state actions by removing the requirement of showing reasonable cause for a violation to a district court before the issuance of a subpoena.

Committee members suggested that many multinational corporations are larger than some countries in the size of their budgets, and there needs to be enforcement of antitrust laws against large corporations and transnational corporations that control the markets.

Bill Drafts Considered Antitrust Investigations

The committee considered a bill draft to remove the requirement that the Attorney General receive district court approval before investigating antitrust violations.

The committee received testimony in opposition to the bill draft. The committee was informed that present

law requires a district court judge acting as an independent, nonpolitical decisionmaker to find reasonable cause before the Attorney General may begin an investigation. The points of opposition were that the bill draft would create a one-man grand jury in the politically elected office of the Attorney General, would remove a protection for individuals from government intrusion, and would change the burden on the accused to prove the investigation is improper. The ability for an entity to appeal the use of investigatory authority remained under the bill draft; however, the individual or business being investigated has to take an affirmative action to stop the investigation. In comparison, it was argued that it is a minor hurdle for the Attorney General to go to court and receive approval from a judge before exercising investigatory authority. Although one thought expressed was that this bill draft may aid the Attorney General in investigating the meatpacking business through a multistate effort, the bill draft is broader because it applies to all entities, including individuals being investigated for antitrust violations.

The committee received testimony in support of the bill draft. The committee was informed there is no substantial merit for the requirement, and the requirement is unique to this state. Most states allow the Attorney General to conduct civil investigations without court approval, and the Attorney General of the United States is not required to get court approval before antitrust investigations. In addition, consumer protection investigations in this state do not need judicial oversight, and there have been no abuses of that power. The safeguard against abuse of power is that the Attorney General's office is under the control of an elected official and hence is sensitive to the citizens of North Dakota. In addition, the object of the investigation is protected because the court can quash any of the Attorney General's investigatory actions.

The committee was informed that getting court approval is not a major impediment; however, it is an inconvenience. This inconvenience creates a timelag when this state is working with other states in multistate antitrust investigations. The committee was informed the bill draft satisfied the request of what, if anything, could be done to strengthen this state's antitrust law.

Committee members pointed out that there is trust in the elected officials in this state to do the right thing. The bill draft basically removed the power of review from an elected district court judge and placed it with an elected state official--the Attorney General. The Attorney General represents the people of North Dakota, and if the bill draft gives more power to the people by taking away a minor protection for big business, then that is a reasonable tradeoff.

Antitrust Appropriation and Fund

The committee considered a bill draft to create a revolving fund for the enforcement of antitrust laws. The

bill draft provided for an appropriation of \$500,000. Attorneys' fees and civil penalties would be deposited in the antitrust fund. All money in the antitrust fund would be subject to appropriation.

Under NDCC Section 54-12-18, all costs, expenses, and attorneys' fees and civil penalties collected by the Attorney General regarding any antitrust matter are placed into the Attorney General refund fund. This fund has a continuing appropriation; however, any excess funds at the end of each fiscal year are deposited in the general fund. The bill draft would allow moneys to stay in the fund at the end of a biennium, but the bill draft does not have a continuing appropriation. The bill draft would supersede Section 54-12-18, in which there is similar wording.

The committee received testimony in support of the bill draft. The major factor limiting antitrust actions in this state is the lack of resources to investigate agribusiness mergers. The \$500,000 appropriation would not be used as much for hiring people as for litigation expenses, e.g., expert witnesses, including economists.

Testimony on Other Factors Affecting Price

There are a number of factors that affect price. The committee was informed the major cause of low crop prices is the record world crop production for several years in succession and the high value of the dollar. The committee was informed of five circumstances that will increase prices:

1. Domestic demand is increased.
2. Bad weather is experienced in major growing areas.
3. Export levels are increased.
4. Low prices have squeezed out higher cost producers, thereby reducing the world supply of grain.
5. Federal farm policy is changed.

The committee was informed that one way to increase profitability is for producers to take over processing and marketing functions. The per capita income of Americans has increased, but food expenditures have stayed about the same. As a result of increasing incomes, people want more free time and do not want to cook. Greater wealth increases food elasticity because with more wealth, people become more critical as to the quality of their food. Higher quality usually means more processing which means higher costs. Farms have seen a rise in the cost of production and not in prices; however, consumer prices are increasing. Producers can take advantage of these higher prices by taking over marketing functions. In short, the processing component of food products is increasing, but the need for food products is fairly constant. However, the committee was informed that last year food processors lost 21 percent on investment. Although there has been a trend going on for a long time of farmers receiving a smaller portion

of the pie, the trend does not appear attributable to food processors.

The committee was informed that United States producers have to spend more time and money on the marketing of their products; however, producers are not generally willing to spend money for marketing. Other industries spend much more on marketing than the agricultural production industry. One exception and success story is the Washington apple growers, who spend \$1.50 per box on a \$6 box of apples for marketing. The way to increase prices through marketing is by education and information. The committee was informed that the marketing system should rely on the private sector, and government support should be in research and development.

Productivity

The committee was informed that by spending money on research and increasing production, the price of agricultural products may go down; however, this does not mean money should not be spent on research. The only way prices will increase because of less research is if the United States could convince all countries not to spend any money on research. It is impossible to convince others not to invest in the future of the agricultural industry. The first group to benefit from research has a window of opportunity to profit above competitors.

Commodity prices have consistently decreased for the last 100 years. The committee was informed that this trend is not likely to change because there are new areas in this world that are coming into production. The committee was informed that acreage reduction in the United States will not affect price because other countries will put land into production to fill the void. For example, China recently discovered it has one-third more acres in production than what was previously thought. Before this discovery, it was thought that average yields were higher than they are; hence, there is a greater potential for increased production than was previously thought. Farmers have increased production threefold over the last 40 years in wheat and corn. Productivity has increased by two and one-half times from 1949 to 1994 because of technology. There has been a 10 percent increase per year in productivity in North Dakota. The benefits from increased productivity have not benefited farmers, however, but have benefited consumers and manufacturers. If government payments are ignored, over time net farm income has gone down.

The committee was informed that family farmers cannot be independent. They need to form alliances to add value to their crops or lower production costs with larger operations. Farmers need to take advantage of economies of size.

Variety-Specific Demand and Quality Issues

The committee was informed that a bright spot in the future for grain marketing is in variety-specific demand. Buyers are looking for particular varieties that will work

particularly well for certain purposes. Smaller producers who can meet a particular need have many opportunities. Although there is opportunity in producing particular varieties for particular needs, most grain buying still is done on price alone. The major benefit from variety-specific segregation will come when suppliers convince customers of the worth of the increased cost.

This country has some barriers in entering a variety-specific market and some advantages. Our economic system cannot compete with the Canadian Wheat Board. The Canadian Wheat Board has given away quality at no extra cost to receive market share. It is difficult to profit from selling specific-quality wheat for specific end uses if other countries give away quality. Canada keeps varieties of wheat separate through the national varietal release program and requires visual distinguishability. Varieties are separated on the state level in the United States. It would be difficult to require visual distinguishability in this country. This state plants 20 times more varieties of wheat than all of Canada. However, this country has an advantage in our separation system because of better on-farm storage. Testing will have to evolve to handle segregation.

Transportation

The committee received testimony on issues relating to the transportation of agricultural products. The committee was informed that the major transportation policy issues are:

1. How will transportation impact processing?
2. Who will bear the increased infrastructure costs—the farmer or the state?
3. How will we maintain low-volume roads?
4. How will we change our status as a residual supplier (a supplier that can be used as a backup to fill excess capacity)?
5. How can we regain lost market power?

The committee was informed there are two major railroad car auction programs. In one program, major grain companies lease the cars they own in exchange for capacity from the railroads. The large grain companies then lease the extra capacity to third parties. The second auction program is held by railroads. They hold a monthly auction of car capacity up to six months in advance of the provisions of that capacity. Provision of that capacity is guaranteed by the railroad, and elevators pay a premium for that guarantee. The premium paid to railroads for auctioned cars is hardly any amount if there is a grain shortage. The premium may rise between \$300 and \$400 per car when there is a large demand for cars. The auction is not truly free market because the railroad sets a minimum bid. The Public Service Commission and others monitor the auction program to assure that it is not manipulated or that artificial shortages are not created by the railroads.

Committee discussion indicated that there appears to be a certain amount of unfairness in the car auctioning

process for small elevators because they do not have as much money as large elevators, thereby limiting the lots on which they can bid.

Grain Grading

The committee investigated reports that there are differences in the grades obtained from different federal laboratories. The destination grade is always less than the origination grade when there has been a difference for certain individuals. This causes a huge financial impact for the individuals.

The committee received testimony on official grain grading in the United States from a representative from the Federal Grain Inspection Service office in Grand Forks. The operation of the grain grading system within the United States is permissive. A producer can choose an unofficial laboratory. Inspection is mandatory for export. It would greatly increase costs for there to be a mandatory system established in the United States.

The committee received testimony on discrepancies in grain grading. All samples that are graded by the official system are kept for three days and may be redone, sent to the federal appeal level, and the board of appeal level to determine if there is a discrepancy due to the grading system. In addition, there are random checks of the official system to ensure quality. Historically, the official grain grading system has a good track record. Committee members pointed out that the appeal process is not practical because farmers need to quickly determine what to do with their crops.

Most grain headed to the South is unloaded according to North Dakota grades. Some elevators have had problems with elevators in the Pacific Northwest. Large elevators in the Pacific Northwest use the destination grade. Although there is a tracking system for determining the variability for destination and origin grades, the system has not been used for grain going to the Northwest. The Federal Grain Inspection Service could do the tracking survey at the request of an elevator and at no cost to the elevator. Only a federal law could require grading at the origination point.

Falling numbers tests alpha amylase activity. Alpha amylase changes the gluten strength. Falling numbers is not a measure of sprout damage; however, there is a correlation between falling numbers and sprout damage. Alpha amylase activity changes when sprouting is about to happen. Falling numbers is not damage under the official standards; however, in the marketplace a test resulting in low falling numbers means poor gluten strength, which results in bread with holes in it. End users are using grain grading to purchase high-quality grain. Flour millers need a certain level of falling numbers, and they place that requirement in their purchase contracts. A producer may not be happy with low falling numbers and low prices; however, a consumer would not be happy with large holes in bread because of no gluten strength.

The committee was informed concerning possible solutions to low falling numbers. A producer may plant a variety that is resistant to low falling numbers. A producer should not mix grain with low falling numbers and no sprout damage with good grain because it ruins the good grain.

The committee was informed that the difference between the amount of damage determined by different graders may be attributed to the fact that the submitted sample is not obtained by an official sampler or in a way that ensures the sample is representative of the entire field. It is important to note the damage determination is only for a particular sample, not the entire field. The uniformity of damage in the field is an issue. When, where, and how the sample is taken affects the damage percentage. A sample taken in the field at one point may differ from one taken in another point of the field or one taken in the combine or in the bin.

The process of doing a damage analysis is a visual and subjective process. It takes five years to become an effective analyzer for wheat. There are line slides, objective samples, to which the analyzer can compare the sample when there is a question. The analysis is done through a standardized procedure, including using the same surface with the same light bulbs.

There can be different portions of damage in the same sample test. If the variations are within two standard deviations, it is not significant unless there is a pattern showing the deviation to be in one direction. If there is a deviation above two standard deviations, then the Federal Grain Inspection Service takes a closer look at the grading process. As damage increases, especially sprout damage, variability increases and does not divide out equally.

The committee was informed the Federal Grain Inspection Service provides comment for the changing of grain grading standards; however, crop insurance works with the grain grading standards as written, and the Federal Grain Inspection Service has no involvement as to crop insurance.

Committee discussion indicated that farmers are disadvantaged by testing because crop insurance does not cover the damage, and the farmer cannot sell the grain on the market because of low falling numbers. The problem is that the falling numbers test is widely used in the market but is not part of the official grain grading system. In addition, the problems caused by the inability to get crop insurance payments appears to be one of the most severe problems in agriculture. It was suggested that falling numbers should be correlated with crop damage insurance.

The committee considered a concurrent resolution draft urging Congress to provide for consistent grain grading. The draft was amended to promote point-of-origin grain grading and suggest that risk management grades follow Commodity Credit Corporation grades for adjustments for crop insurance.

Recommendations

The committee recommends House Bill No. 1033 to remove district court approval before investigating anti-trust violations by the Attorney General.

The committee recommends House Bill No. 1034 to create a revolving fund for the investigation of antitrust violations and appropriates \$500,000 for that purpose.

The committee recommends House Concurrent Resolution No. 3001 urging Congress to provide for consistent grain grading based on point-of-origin grain grading. In addition, the concurrent resolution suggests that risk management grades follow the Commodity Credit Corporation grades for adjustments for crop insurance.

AGRICULTURAL RESEARCH AND EDUCATION BOARD REPORTS

The committee received testimony from a representative from the State Board of Agricultural Research and Education on the board's activities as to research and expenditures. The representative provided information on the allocation of the agricultural research fund in fiscal years 1998 through 1999 and 1999 through 2000, and on all the research projects and the amount of money granted for fiscal year 1998 through 1999. Funds available for grants have increased from \$556,790.30 for fiscal year 1998 through 1999 to \$679,786.76 for fiscal year 1999 through 2000.

The Agricultural Research and Education Board was required to have its budget completed by February 2000. The budget was approved at 110 percent by the State Board of Higher Education in March 2000. The budget was prioritized and pared down to comply with the Governor's 100 percent budget request. The committee was informed that the board had \$239,000 cut from its budget from the time it was sent to the Governor. As a result, certain programs have been eliminated.

The State Board of Agricultural Research and Education reported on the activities and research that it is funding. An explanation of "granting committees" and how they have evolved and are functioning was detailed. Those committees are assisting in the design of research to meet the particular needs and available niches of North Dakota agriculture. The board has developed a long-term approach to beef research. The two goals of beef research are to provide lower cost of

production and to increase the value and wholesomeness of beef. The board's barley initiative is investigating the feeding of low-grade barley to cattle.

The committee received testimony from a representative from the State Board of Agricultural Research and Education on the board's activities as to biotechnology crops. The board has approved the biotechnology initiative and will look at markets before research is done. The focus of study will be on wheat.

There are four research subject areas of focus identified for biotechnologically enhanced crops—quality, desired end-user traits, potential market impact, and identification of varieties and traits for future development. The area of quality includes a study of identity preservation. Studies have shown that to segregate and identify biotech crops will cost up to 18 cents per bushel on some crops with the average being three to six cents. The identification of varieties and traits for future development includes potential market impacts of biotech crops. For example, the potential market impact of Roundup-ready soybeans is \$8 million, assuming a 50 percent adoption rate. Farmers will receive 19 percent of this impact. Seed companies will receive 45 percent of this impact. If there is worldwide adoption of Roundup-ready soybeans, the impact will be \$2.4 billion; however, farmers will only receive six percent of this impact. For there to be identification of varieties and traits for future development, there needs to be cooperation between entities engaged in research and development and those engaged in marketing.

Committee members commented that biotechnology crops are in their stages of infancy and by using technology there will be less demand for pesticides. This will be appealing to consumers; however, there have been petitions against genetically modified crops, and there was controversy over genetically modified crops having an organic label. Consumers need to be informed of the benefits of genetically modified crops before there is increased production. Over one-half of the American public think their food is free of genetically modified products; however, 60 percent of food products have some genetic modification. Fifty-five percent of all soybeans and 40 percent of all corn are biotechnology modified. The impact of genetically modified crops on the structure of agriculture will be more vertical integration and more contracting.

BUDGET SECTION

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

Budget Section members were Representatives Jack Dalrymple (Chairman), Ole Aarsvold, LeRoy G. Bernstein, James Boehm, Merle Boucher, Rex R. Byerly, Ron Carlisle, Al Carlson, Jeff Delzer, John Dorso, Pam Guleson, Serenus Hoffner, Robert Huether, James Kerzman, Ed Lloyd, David Monson, Ronald Nichols, Jim Poolman, Ken Svedjan, Mike Timm, Ben Tollefson, Francis J. Wald, and Janet Wentz and Senators John Andrist, Bill L. Bowman, Tony Grindberg, Joel C. Heitkamp, Ray Holmberg, Aaron Krauter, Ed Kringstad, Elroy N. Lindaas, Pete Naaden, Gary J. Nelson, David E. Nething, Larry J. Robinson, Ken Solberg, Harvey D. Tallackson, and Steve Tomac.

Senator Rod St. Aubyn was a member of the committee prior to his resignation on August 30, 2000.

The Budget Section submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

The following duties, assigned to the Budget Section by statute, were acted on during the 1999-2001 biennium:

1. **Higher education campus improvements and building construction (NDCC Section 15-10-12.1)** - This section allows the State Board of Higher Education, subject to Budget Section approval, to construct buildings and campus improvements financed by donations, gifts, grants, and bequests or to sell real property or buildings received by gift or bequest. The Budget Section approval must include a specific dollar limit for each building or campus improvement project.
2. **Irregularities in the fiscal practices of the state (NDCC Section 15-14-03.1)** - This section requires the Office of the Budget to submit a written report to the Budget Section documenting:
 - a. Any irregularities in the fiscal practices of the state.
 - b. Areas in which more uniform and improved fiscal procedures are desirable.
 - c. Any expenditures or governmental activities contrary to law or legislative intent.

- d. The use of state funds to provide bonuses, incentive awards, or temporary salary adjustments for state employees.
3. **Transfers exceeding \$50,000 (NDCC Section 54-16-04(2))** - This section allows the Emergency Commission to authorize, subject to Budget Section approval, a transfer exceeding \$50,000 from one fund or line item to another.
4. **Federal funds not appropriated (NDCC Section 54-16-04.1)** - This section allows the Emergency Commission to authorize, subject to Budget Section approval, the expenditure of more than \$50,000 of federal funds that have not been appropriated and which the Legislative Assembly has not indicated an intent to reject.
5. **Other funds not appropriated (NDCC Section 54-16-04.2)** - This section allows the Emergency Commission to authorize, subject to Budget Section approval, the expenditure of more than \$50,000 from gifts, grants, donations, or other sources that have not been appropriated and which the Legislative Assembly has not indicated an intent to reject.
6. **Children's Services Coordinating Committee grants (NDCC Section 54-56-03 and 1999 House Bill No. 1014, Section 2)** - These sections provide that the Children's Services Coordinating Committee must seek Budget Section approval before distributing any state-wide grants not specifically authorized by the Legislative Assembly.
7. **Report from ethanol plants receiving production incentives (1999 Senate Bill No. 1019)** - Section 5 of this bill requires any North Dakota ethanol plant receiving production incentives from the state to file with the Budget Section a statement indicating whether the plant produced a profit during the preceding fiscal year after deducting incentive payments received from the state.
8. **Additional full-time equivalent (FTE) positions (1999 Senate Bill No. 2012)** - Section 6 of this bill requires the human service centers, State Hospital, and the Developmental Center to report to the Budget Section on the hiring of any FTE positions in addition to those authorized by the Legislative Assembly.
9. **Preliminary planning revolving fund (NDCC Section 54-27-22)** - This section provides that before any funds can be distributed from the preliminary planning revolving fund to a state agency, institution, or department, the Budget Section must approve the distribution.
10. **Form of budget data (NDCC Section 54-44.1-07)** - This section requires the director of the budget to prepare budget data in the form

prescribed by the Legislative Council and to present it to the Legislative Assembly at a time and place set by the Legislative Council. The Legislative Council assigned the responsibility to the Budget Section.

11. **Expenditures of excess local fund revenues by higher education institutions (1999 House Bill No. 1003)** - Section 11 of this bill provides that the State Board of Higher Education must present a report to the Budget Section on the expenditures by higher education institutions of any local funds in excess of the amounts appropriated in Section 1 of the bill.
12. **Line item transfers by agencies that received program-based appropriations** - The following agencies that received program-based appropriations may, with Budget Section approval, transfer more than 10 percent of a line item, as needed, to meet established performance measures:
 - a. Highway Patrol (Section 4 of 1999 House Bill No. 1011).
 - b. Department of Transportation (Section 2 of 1999 House Bill No. 1012).
 - c. Land Department (Section 4 of 1999 House Bill No. 1013)
 - d. Department of Corrections and Rehabilitation - Adult Services Division (Section 3 of 1999 House Bill No. 1016).
 - e. State Auditor (Section 3 of 1999 Senate Bill No. 2004).
 - f. Office of Management and Budget (Section 7 of 1999 Senate Bill No. 2015).
 - g. Parks and Recreation Department (Section 9 of 1999 Senate Bill No. 2021).
13. **Transfers between the divisions of the Department of Corrections and Rehabilitation (1999 House Bill No. 1016)** - Section 2 of this bill authorizes the Department of Corrections and Rehabilitation to transfer, with Budget Section approval, appropriation authority between the divisions of the department.
14. **Study grant preapproval process (1999 Senate Concurrent Resolution No. 4050)** - This resolution provides for a study of the feasibility and desirability of implementing a grant preapproval process for every state agency, except institutions under the control of the State Board of Higher Education.
15. **State building construction projects (NDCC Section 48-02-20)** - This section provides that a state agency or institution may not significantly change or expand a building construction project approved by the Legislative Assembly, unless the change, expansion, or additional expenditure is approved by the Legislative Assembly, or the Budget Section if the Legislative Assembly is not in session.
16. **Tobacco settlement funds (NDCC Section 54-44-04)** - This section provides that the director of the Office of Management and Budget is required to report to the Budget Section on the status of tobacco settlement funds and related information.
17. **Expenditure of additional local funds for capital projects (1999 House Bill No. 1003)** - Section 8 of this bill provides that with the approval of the Budget Section, Bismarck State College and Lake Region State College may obtain and utilize any available funds in excess of the minimum required local matching funds of \$200,000 for the Bismarck State College music addition and \$495,000 for the Lake Region State College auditorium renovation project.
18. **Home mortgage finance program available within Indian reservations (1999 House Bill No. 1015)** - Section 14 of this bill provides that the Industrial Commission and the Indian Affairs Commission are required to report to the Budget Section on the status of home mortgage finance programs of the Housing Finance Agency available within Indian reservations in the state.
19. **Job Service North Dakota asbestos abatement project (1999 House Bill No. 1017)** - Section 6 of this bill provides that Job Service North Dakota must report to the Budget Section on the status of its asbestos abatement project.
20. **Bovine tuberculosis disease (1999 Senate Bill No. 2009)** - Section 15 of this bill provides that the Agriculture Commissioner and the State Veterinarian report periodically to the Budget Section during the 1999-2000 interim on the status and associated costs of bovine tuberculosis disease in cattle.
21. **Proposed reductions to the Northeast Human Service Center (1999 Senate Bill No. 2012)** - Section 18 of this bill provides that the Department of Human Services is required to report to the Budget Section, prior to the submission of the department's 2001-03 biennium budget request, on \$500,000 of general fund reductions in the proposed budget request for the Northeast Human Service Center for the 2001-03 biennium.
22. **Traditional Medicaid grants (1999 Senate Bill No. 2012)** - Section 19 of this bill provides that the Department of Human Services is required to report periodically to the Budget Section during the 1999-2001 biennium on the status of funding for traditional Medicaid grants.
23. **Federal class size reduction initiative grants (1999 Senate Bill No. 2013)** - Section 24 of this bill provides that the Department of Public Instruction is required to report to the Budget Section during the 1999-2001 biennium on the

distribution of federal class size reduction initiative grants.

24. **Increased payments to governmental nursing facilities (1999 Senate Bill No. 2168)** - Section 4 of this bill appropriates \$12,409,448 (\$3,618,391 from the general fund, \$8,788,057 from other funds) for making payments from the government nursing facility funding pool and for related administrative costs as provided in Senate Bill No. 2168. This section provides that any moneys that become available in excess of the \$12,409,448 are appropriated and may be spent for additional payments to government nursing facilities, subject to Emergency Commission and Budget Section approval.
25. **Additional allocations from the health care trust fund (1999 Senate Bill No. 2168)** - Section 5 of this bill appropriates \$8,715,279 from other funds for payments from the health care trust fund, pursuant to Senate Bill No. 2168. This section provides that any moneys that become available, in excess of the \$8,715,279, are appropriated and may be spent by the Department of Human Services subject to Emergency Commission and Budget Section approval.
26. **Grand Forks Corporate Center (1999 Senate Bill No. 2188)** - Section 5 of this bill provides that Budget Section approval is required prior to the refinancing of debt, the incurring of debt for improvements, or the voluntary sale of the Corporate Center in Grand Forks.
27. **State water development projects (1999 Senate Bill No. 2188)** - Section 9 of this bill provides that during the 1999-2001 biennium, the State Engineer is required to report periodically to the Budget Section on the implementation of the comprehensive statewide water development program and state water management plan and the issuance of bonds for flood control projects, the Southwest Pipeline Project, a Devils Lake outlet, and a statewide water development program.

The following duties, assigned to the Budget Section by statute or Legislative Council directive, are scheduled to be addressed by the Budget Section at its December 2000 meeting:

1. **Review and report on budget data prepared by the director of the budget (Legislative Council directive)** - Pursuant to Legislative Council directive, the Budget Section is to review and report on the budget data prepared by the director of the budget and presented to the Legislative Assembly during the organizational session.
2. **Salary increases for the second year of the biennium (1999 Senate Bill No. 2015)** -

Section 11 of this bill provides that the Office of Management and Budget is required to report on the amounts provided by state agencies and institutions for salary increases for the second year of the biennium, line item transfers relating to the increases, the source of funding, and the impact on the provision of services.

The following duties, assigned to the Budget Section by statute or Legislative Council directive, did not require action by the Budget Section during the 1999-2000 interim:

1. **State Forester reserve account (NDCC Section 4-19-01.2)** - This section allows the State Forester to spend moneys in the State Forester reserve account only after receiving Budget Section approval.
2. **Investment in real property by the Board of University and School Lands (NDCC Section 15-03-04)** - This section prohibits the Board of University and School Lands from purchasing, as sole owner, commercial or residential real property without prior approval of the Legislative Assembly or the Budget Section.
3. **Game and Fish Department land acquisitions (NDCC Section 20.1-02-05.1)** - This section requires the Game and Fish Department to obtain Budget Section approval of every land acquisition of more than 10 acres or \$10,000.
4. **Reduction of the game and fish fund balance below \$10 million (NDCC Section 20.1-02-16.1)** - This section provides that the Game and Fish Department can spend moneys in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below \$10 million, unless otherwise authorized by the Budget Section.
5. **Provision of contract services by the Developmental Center (NDCC Section 25-04-02.2)** - This section provides that, subject to Budget Section approval, the Developmental Center may provide services under contract with a governmental or nongovernmental person.
6. **Termination of food stamp program (NDCC Section 50-06-05.1(17))** - This section provides that, subject to Budget Section approval, the Department of Human Services may terminate the food stamp program if the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the coupon bonus payments.
7. **Termination of energy assistance program (NDCC Section 50-06-05.1(19))** - This section provides that, subject to Budget Section approval, the Department of Human Services may terminate the energy assistance program if

the rate of federal financial participation in administrative costs is decreased or if the state or counties become financially responsible for the energy assistance program payments.

8. **Job insurance trust fund balance (NDCC Section 52-02-17)** - This section requires Job Service North Dakota to report to the Budget Section if the balance of the job insurance trust fund is projected to fall below \$40 million.
9. **Transfers resulting in program elimination (NDCC Section 54-16-04(1))** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer that would eliminate or make impossible the accomplishment of a program or objective funded by the Legislative Assembly.
10. **Cash flow financing (NDCC Section 54-27-23)** - This section provides that in order to meet the cash flow needs of the state, the Office of Management and Budget may borrow, subject to Emergency Commission approval, from special funds on deposit in the state treasury. However, the proceeds of any such indebtedness cannot be used to offset projected deficits in state finances unless first approved by the Budget Section. Additional cash flow financing, subject to certain limitations, must be approved by the Budget Section.
11. **Budget stabilization fund (NDCC Section 54-27.2-03)** - This section provides that any transfer from the budget stabilization fund must be reported to the Budget Section.
12. **Objection to budget allotment or expenditure (NDCC Section 54-44.1-12.1)** - This section allows the Budget Section to object to a budget allotment, an expenditure, or the failure to make an allotment or expenditure if such action is contrary to legislative intent.
13. **Budget reduction resulting from initiative or referendum action (NDCC Section 54-44.1-13.1)** - This section provides that, subject to Budget Section approval, the director of the budget may reduce state agency budgets by a percentage sufficient to cover estimated revenue reduction caused by initiative or referendum action.
14. **Extraterritorial workers' compensation insurance (NDCC Section 65-08.1-02)** - This section authorizes the Workers Compensation Bureau to establish, subject to Budget Section approval, a casualty insurance organization to provide extraterritorial workers' compensation insurance.
15. **Expenditures in excess of amount appropriated for traditional Medicaid grants (1999 Senate Bill No. 2012)** - Section 19 of this bill provides that the Department of Human Services may not exceed the amount appropriated for traditional Medicaid grants for the 1999-2001 biennium without prior Budget Section approval.
16. **Reduction of nursing home limitations for cost categories (1999 Senate Bill No. 2012)** - Section 26 of this bill provides legislative intent that the Department of Human Services receive Budget Section approval prior to reducing below the levels included in the 1999-2001 biennium legislative appropriation the nursing home limitations for direct, other direct, and indirect cost categories.
17. **Establishment of a traumatic brain-injured facility (1999 Senate Bill No. 2012)** - Section 35 of this bill provides a contingent appropriation of \$200,000 (\$60,000 from the general fund, \$140,000 from federal funds) which may be spent if a facility for the traumatic brain-injured is established in western North Dakota and if the expenditure is approved by the Emergency Commission.
18. **Transfers of positions to the Division of Independent Study (1999 Senate Bill No. 2013)** - Section 23 of this bill requires the Department of Public Instruction to report to the Budget Section on any transfers of positions to the Division of Independent Study from the other divisions of the department during the 1999-2001 biennium.
19. **Program terminations or reductions due to reduced federal funding (1999 Senate Bill No. 2015)** - Section 19 of this bill requires state agencies, departments, and institutions to receive Budget Section approval for the following:
 - a. To terminate a program for which federal funding is terminated.
 - b. To prioritize programs as necessary to make programmatic reductions, if federal funding for separate programs is combined in a block grant, resulting in a reduction of federal funds available for those programs.
20. **Transfers from the Bank of North Dakota to offset declines in general fund revenues (1999 Senate Bill No. 2015)** - Section 18 of this bill provides that the Budget Section may approve the transfer of up to \$40 million from the Bank of North Dakota to the state general fund if, during the 1999-2001 biennium, the director of the Office of Management and Budget determines that general fund revenues will not meet the legislative forecast.
21. **Disaster claims relating to spring 1997 flooding in the Red River Valley (1999 Senate Bill No. 2016)** - Section 4 of this bill provides that before the Division of Emergency Management may request loans from the Bank of North Dakota to affected political subdivisions relating to spring 1997 flooding in the Red River Valley,

the disaster claims must be approved by the Division of Emergency Management, the Emergency Commission, and the Budget Section.

22. Federal block grant hearings (1999 Senate Concurrent Resolution No. 4001) - This resolution authorizes the Budget Section, through September 30, 2001, to hold any required legislative hearing for federal block grants.

23. Expenditures for the service, access, growth, and empowerment (SAGE) project (1999 House Bill No. 1003) - Section 12 of this bill provides that prior to purchasing goods or contracting for services for the SAGE project, the State Board of Higher Education must receive permission from either the Legislative Assembly or the Budget Section.

**OFFICE OF MANAGEMENT AND BUDGET
Status of the State General Fund**

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

The following is a summary of the status of the state general fund, based on actual revenue collections through August 31, 2000:

Unobligated general fund balance - July 1, 1999	\$61,114,425
Add	
Actual general fund collections through August 31, 2000	897,660,477
Remaining forecasted general fund revenues for the 1999-2001 biennium (based on the 1999 legislative forecast)	687,871,772
Total estimated general fund revenue for the 1999-2001 biennium	\$1,646,646,674
Less	
1999-2001 biennium adjusted general fund appropriations (legislative appropriations of \$1,594,038,538 less 1999-2001 emergency appropriations of \$4,452,065 spent during the 1997-99 biennium and a contingent 1999-2001 appropriation of \$4,262,410, which is not anticipated to be spent)	1,585,324,063
Estimated general fund balance - June 30, 2001 (\$50,003,755 more than the 1999 legislative estimate of \$11,318,856)	\$61,322,611

The Office of Management and Budget indicated oil prices in North Dakota as of September 2000 were approximately \$25 per barrel, and 20 rigs were currently operating in North Dakota compared to 11 rigs from one year previous. Oil revenue collections through August 31, 2000, have totaled \$40,521,239, approximately \$20 million more than legislative forecasts of \$20,496,000. Total general fund revenue collections through August 31, 2000, have been approximately \$32 million more than the legislative forecast of \$865,716,976.

Fiscal Irregularities

Pursuant to NDCC Section 54-14-03.1, the Budget Section received a report from the Office of Management and Budget on irregularities in the fiscal practices of the state. Fiscal irregularities include the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The report identified the State Board for Vocational and Technical Education as granting six employees a cash incentive award of \$500 each to become an "agency expert" in one area of the software package used by the department. The report said \$500 cash incentive awards were provided to these employees in 1998 and 1999. The report identified the North Dakota University System for providing one-time salary adjustments to 25 employees during the 1999-2000 fiscal year. The salary adjustments ranged from \$300 to \$1,500. The report identified three agencies--the State Treasurer, Indian Affairs Commission, and Securities Commissioner--who overspent their line item appropriation authority for salaries and wages or operating expenses but did not exceed their overall appropriation authority for the 1997-99 biennium.

The Budget Section stated its opposition to the practice of state agencies and institutions making irregular salary payments until standards relating to this practice have been established by the Legislative Assembly and that the Budget Section opposition to this practice be communicated to all state agencies and institutions.

The Budget Section received a summary of state employee bonus programs in other states. The Central Personnel Division presented information on the establishment of a performance-based bonus system for North Dakota classified state employees. The proposed bonus plan would require a performance evaluation process that identifies at least three levels of performance. Eligible employees must be employed for at least one year and may receive no more than one bonus per year. The chairman of the Budget Section suggested the Central Personnel Division seek funding for the performance-based bonus program in the 2001-03 biennium executive budget to ensure that the Legislative Assembly addresses the issue during the 2001 legislative session.

Preliminary Planning Revolving Fund

Pursuant to NDCC Section 54-27-22, the Budget Section received reports from the Office of Management and Budget on recommendations for the use of moneys in the preliminary planning revolving fund. The preliminary planning revolving fund received funding through a \$200,000 general fund appropriation by the 1997 Legislative Assembly. The report listed the following criteria used to evaluate agency requests for moneys from the preliminary planning revolving fund:

- External mandates, such as a court order or health, life safety, and building code concerns.

- Program needs, such as the impact of the facility on achieving departmental goals or program requirements.
- State policy direction, including gubernatorial and legislative priorities.
- Funding for the project, including the amount available from nongeneral fund sources.
- Scope of the project, including the estimated cost and the need to complete the project in multiple phases.

Based on the above criteria, the Office of Management and Budget requested moneys be provided from the preliminary planning revolving fund for the following five projects which the Office of Management and Budget plans to recommend to future legislative assemblies:

Project Description	Agency	Recommended Funding From the Preliminary Planning Revolving Fund
Main Hall/McFarland Auditorium renovation	Minot State University	\$65,000
Multipurpose/food service building at the Missouri River Correctional Center	Department of Corrections and Rehabilitation	19,500
Penitentiary parking lot		6,000
Murphy Hall renovation	Dickinson State University	45,000
Minard Hall renovation	North Dakota State University	62,000
Total		\$197,500

Pursuant to NDCC Section 54-27-22, the Budget Section approved the distribution of \$197,500, of the \$200,000 balance from the preliminary planning revolving fund, as recommended by the Office of Management and Budget.

Tobacco Settlement Proceeds

Pursuant to NDCC Section 54-54-04, the Budget Section received reports on tobacco settlement proceeds received by the state. The Office of Management and Budget reported that as of June 2000, approximately \$30 million has been received by the state and deposited in the tobacco settlement trust fund. The proceeds have been apportioned among the community health trust fund, common schools trust fund, and water development trust fund as follows pursuant to 1999 House Bill No. 1475:

Fund	Amount Transferred From the Tobacco Settlement Trust Fund
Community health trust fund (10 percent)	\$2,995,461
Common schools trust fund (45 percent)	13,479,574
Water development trust fund (45 percent)	13,479,574
Total transfers from the tobacco settlement trust fund	\$29,954,609

The committee learned through the year 2005 it is estimated the community health trust fund will receive \$77.6 million based on a 10 percent share of tobacco settlement moneys; the water development trust fund will receive \$349 million based on a 45 percent share of tobacco settlement moneys; and the common schools trust fund will receive \$349 million based on a 45 percent share of tobacco settlement moneys.

2001-03 Biennium Budget Form Changes

Pursuant to NDCC Section 54-44.1-07, the Office of Management and Budget presented a report to the Budget Section on the form of budget data to be presented to the 2001 Legislative Assembly. The Office of Management and Budget reported there will be no proposed changes to the budget forms for the 2001-03 biennium.

The committee learned the Budget Committee on Government Services was studying state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural areas. The Budget Section learned the Budget Committee on Government Services was considering ways to incorporate agency analyses of job tasks that could be performed away from the agency's central office setting into the budgeting process. The chairman of the Budget Committee on Government Services asked the Budget Section to approve budget form changes to incorporate this analysis in the 2001-03 biennium budget request forms.

Pursuant to NDCC Section 54-44.1-07, the Budget Section requested that the budget data prepared by the Office of Management and Budget include an analysis to be completed by each agency of the feasibility and desirability, including the cost and benefits, of locating any new positions, new programs, or new capital construction away from a central office setting.

STATE WATER COMMISSION Status of Water Projects

Pursuant to Section 9 of 1999 Senate Bill No. 2188, the Budget Section received periodic reports from the State Water Commissioner on the implementation of the state water development program and water management plan and the issuance of bonds for various water projects. The Budget Section learned as of October 2000 the State Water Commission was awaiting determination of federal funding for three major projects:

- The Dakota Water Resources Act, dealing with Garrison Diversion, which may be funded by the end of 2000;
- The Northwest Area Water Supply Project, which is being delayed due to concerns by Canada over possible biota transfer; and
- The Devils Lake outlet project, which is awaiting the issuance of a permit from the United States Army Corps of Engineers.

The Budget Section learned \$32.1 million of bonds were issued by the State Water Commission on March 23, 2000. The bond sale provided \$23 million for Grand Forks flood control and \$4.5 million for the Southwest Pipeline Project. The State Water Commission plans on issuing an additional \$31.5 million of bonds authorized in 1999 Senate Bill No. 2188 during the 2001-03 biennium for water projects in Grand Forks, Wahpeton, Grafton, and potentially Devils Lake.

The Budget Section learned the State Water Commission has identified \$40.84 million of new projects for the 2001-03 biennium. The report indicated, when combined with \$31.5 million of projects authorized in 1999 Senate Bill No. 2188, the total cost of projects for the 2001-03 biennium could equal \$72.34 million. The priority water development needs are as follows:

Projects	State Costs (In Millions of Dollars)
Municipal and rural water supply	\$15.00
Irrigation (statewide)	3.29
General water management	5.00
Flood control	5.75
Eastern Dakota water supply	0.15
Devils Lake	4.00
Missouri River management	0.00
Northwest Area Water Supply Project	0.00
Southwest Pipeline Project	7.30
Weather modification	0.35
Subtotal	\$40.84
Senate Bill No. 2188 authorized projects	31.50
Total	\$72.34

HIGHER EDUCATION Local Funds Report

The University System presented a comparison of budgeted expenditures to actual expenditures of local funds at each institution of higher education for the 1997-99 biennium. The local funds report indicated the 1997 Legislative Assembly appropriated \$92.8 million of local funds, and the State Board of Higher Education increased that amount by \$6.1 million.

The Budget Section received a request from the North Dakota University System to modify the format of future annual local fund tracking reports. The format changes were requested in order to address audit concerns, including consistent reporting between campuses, and to simplify the reporting requirements. The Budget Section accepted the University System's

request to modify the annual local fund tracking report by reporting revenues rather than expenditures by source and providing the functional detail for actual expenditures rather than for budgeted figures.

Capital Projects

During the 1999-2000 interim, the Budget Section received information relating to the following University System capital projects:

- **University of North Dakota - Biomedical Research Facility** - Pursuant to NDCC Sections 15-10-12.1 and 48-02-20, the Budget Section approved the University of North Dakota's request to increase the spending limit for the construction of the biomedical research facility from \$6 million to \$6,716,803 to reflect a grant from the National Institutes of Health to be used to renovate unfinished space in the basement of the existing medical complex, the construction of a tunnel connecting the new facility with the lower level of the existing medical complex, and the installation of an elevator and stairwell.
- **University of North Dakota - Renovation of School of Medicine and Health Sciences Building** - Pursuant to NDCC Section 15-10-12.1, the Budget Section authorized the University of North Dakota to spend up to \$350,000 from private sources during the 1999-2001 biennium for the renovation of the front entrance, foyer, and hallway of the University of North Dakota School of Medicine and Health Sciences.
- **Bismarck State College - Student Union project** - The Budget Section authorized Bismarck State College to use local funds to expand the Student Union project pursuant to NDCC Section 48-02-20. The project was increased from \$250,000 to \$600,000.
- **Bismarck State College - Music center addition** - Pursuant to Section 8 of 1999 House Bill No. 1003, the Budget Section approved the Bismarck State College request to use an additional \$362,000 of local funds for the Bismarck State College music addition project, increasing the estimated costs of the project from \$400,000 to \$762,000.
- **Lake Region State College - Expand auditorium renovation project** - Pursuant to Section 8 of 1999 House Bill No. 1003, the Budget Section authorized \$190,000 of local funds for the Lake Region State College auditorium renovation project, increasing the estimated cost of the project from \$994,544 to \$1,184,544.
- **Minot State University - Minot State dome entrance** - Pursuant to NDCC Section 15-10-12.1, the Budget Section authorized \$378,000 of local funds to Minot State University

for an addition of a north lobby/entrance to the Minot State dome.

Flood Damage

The Budget Section received information from North Dakota State University and the University of North Dakota on flood damage and potential deficiency appropriation requests to be made to the 2001 Legislative Assembly.

The University of North Dakota is estimating a deficiency appropriation of approximately \$3.1 million for the 1999-2001 biennium. Through September 30, 2000, there are two flood recovery projects related to the 1997 flood ongoing at the University of North Dakota--steamline replacement and sewer system restoration. The steamline replacement project is estimated to be completed by June 2001. Repair work to the water and sanitary sewer systems will be determined by an assessment of the damage and availability of funding sources.

North Dakota State University is estimating a deficiency appropriation of approximately \$4.75 million for the 1999-2001 biennium. There was an estimated \$15.5 million of damage to buildings and contents at North Dakota State University as a result of the June 2000 flood.

DEPARTMENT OF HUMAN SERVICES

Funding for Medicaid

Pursuant to Section 19 of Senate Bill No. 2012, the Budget Section received periodic reports from the Department of Human Services on funding for traditional Medicaid grants. The Budget Section learned through August 2000, the Department of Human Services

appropriation for Medicaid grants was \$278,015,753. Actual expenditures for this period were \$270,299,225 for a savings of \$7,716,528 for all services, of which \$1,682,045 is from the general fund. Because overall expenditures are anticipated to be less than the amount appropriated, the Department of Human Services does not anticipate reducing any services provided to Medicaid recipients or reimbursements provided to Medicaid providers during the remainder of the 1999-2001 biennium.

Intergovernmental Transfer Program

Pursuant to 1999 Senate Bill No. 2168 the intergovernmental transfer program was established to provide loan and grant funds to nursing facilities and other entities to develop appropriate alternatives to nursing facility care especially in the rural communities of North Dakota. The bill allows the Department of Human Services to create a funding pool, the balance of which is determined by calculating, for each nursing facility in the state, the difference between the average Medicare nursing rates and the average rates for Medicaid recipients.

Pursuant to Section 4 of 1999 Senate Bill No. 2168, the Budget Section approved the Department of Human Services request to increase federal and other funds spending authority and the grants-medical assistance line item of the economic assistance subdivision by \$24,653,060 of federal Medicaid funding (\$17,360,685) and a loan from the Bank of North Dakota (\$7,292,375) for making government nursing facility funding pool payments.

The following is a summary of funds provided to the health care trust fund from the intergovernmental transfer program:

Funding Summary					
	Original Projections 1999-2001 Appropriation	First Year 1999-2000	Second Year 2000-01	Total 1999-2001	Total Increase (Decrease)
Government nursing facility funding pool payments					
Federal funds	\$8,564,819 ¹	\$25,922,739	\$17,360,685	\$43,283,424	\$34,718,605
State matching funds	3,618,391	10,888,876	7,292,375	18,181,251	14,562,860
Total	\$12,183,210 ¹	\$36,811,615	\$24,653,060	\$61,464,675	\$49,281,465
Health care trust fund	\$8,524,820	\$25,902,739 ^{2,3}	\$17,340,685 ²	\$43,243,424 ³	\$34,718,604 ⁴

¹ This amount reflects the \$12.4 million appropriation in Section 4 of Senate Bill No. 2168, net of \$226,238 of department administrative costs.

² This amount is less than the government nursing facility funding pool federal funds amount as a result of the \$20,000 that is retained by the two government nursing facilities (Dunseith and McVile) prior to the funds being deposited in the health care trust fund.

³ This amount may be reduced by \$13 million depending on the outcome of the Department of Human Services appeal of the federal Health Care Financing Administration decision to deny \$13 million of North Dakota's first-year government nursing facility funding pool payment.

In addition, on August 31, 2000, the Health Care Financing Administration informed the Department of Human Services it did not agree with the method used by the department to calculate North Dakota's first-year payment. The Health Care Financing Administration has indicated North Dakota claimed \$13 million more than its plan allowed. The department, however, believes its claim was in accordance with its approved plan. The department intends to appeal the Health Care Financing Administration decision.

⁴ The department received Emergency Commission and Budget Section approval in June 2000 to increase spending authority from the health care trust fund by \$2,218,429 to provide additional grants and loans under provisions of Senate Bill No. 2168.

Northeast Human Service Center

Pursuant to Section 18 of 1999 Senate Bill No. 2012, the Budget Section received information from the Department of Human Services on \$500,000 of general fund reductions to the Northeast Human Service Center 2001-03 biennium budget request related to the efficiencies resulting from the collocation of service delivery. The Budget Section learned the Northeast Human Service Center was concerned about the adverse impact the required reductions would have on the services in the region. The Budget Section was informed the Department of Human Services never intended or stated it would be able to find \$500,000 of general fund reductions through efficiencies in the Northeast Human Service Center budget but would keep a hold-even operating budget while achieving long-term departmentwide savings as a result of the collocation of agencies in the new facility. Budget Section members expressed concern with the way the Department of Human Services addressed the funding reductions and indicated the Appropriations Committees in the 2001 Legislative Assembly should review the issue. The Department of Human Services 2001-03 base budget request for the Northeast Human Service Center reflects a reduction of \$500,000, and a restoration of approximately \$484,000 is requested through optional adjustment requests.

Health Insurance Portability and Accountability Act

The Budget Section received information from the Department of Human Services on the status of the Health Insurance Portability and Accountability Act (HIPAA). The Budget Section learned the HIPAA's goal is to reduce the costs and administrative burdens of health care by standardizing electronic transmission of health care data. There will be nine different areas that will require compliance once the rules are finalized. The regulations for electronic transactions were finalized on August 17, 2000, and the Department of Human Services must be in compliance by October 16, 2002. The timeframe for implementation of the remaining areas is not known at this time. The Budget Section learned the Department of Human Services will request, as an optional adjustment, \$25 million to cover the estimated cost to implement the proposed HIPAA regulations. This request will consist of \$7.75 million from the general fund and \$17.25 million of federal funds. An emergency clause will be requested as part of the appropriations bill in order to begin as soon as possible with the necessary computer changes to implement the electronic transaction regulations.

Proposed Reduction to the Social Service Block Grant

The Budget Section received a report from the Department of Human Services on the status of the current funding reduction proposed for the federal social service block grant. The Budget Section learned

legislation pending in Congress would have reduced North Dakota's annual allocation of social service block grant funds from its current level of \$4.2 million to \$1.4 million for the year 2001 and beyond. The Budget Section later learned Congress is expected to fund the social service block grant program at approximately \$4 million.

Additional Full-Time Equivalent Positions at Department of Human Services Agencies and Institutions

Pursuant to Section 6 of 1999 Senate Bill No. 2012, the Budget Section received information on full-time equivalent (FTE) positions at human service centers, the State Hospital, and the Developmental Center. The report indicated the Department of Human Services added 18.75 FTEs to the number approved by the Legislative Assembly at a cost of approximately \$1.2 million, with \$237,000 from the general fund, for the 1999-2001 biennium. The federal funds additions to the human service centers' budget were through either Emergency Commission approval or transfers from areas previously contracted. The report also indicated the State Hospital and the Developmental Center did not add any additional FTEs to what was authorized by the 1999 Legislative Assembly.

NORTH DAKOTA HOUSING FINANCE AGENCY

Home Mortgage Finance Programs Available Within Indian Reservations

Pursuant to Section 14 of 1999 House Bill No. 1015, the Budget Section received information on the status of home mortgage finance programs of the North Dakota Housing Finance Agency available within Indian reservations in the state of North Dakota. The Budget Section learned home mortgage finance program funding is now available within North Dakota Indian reservations. The program is funded through the sale and issuance of federally tax exempt mortgage revenue bonds, the proceeds of which are used to purchase eligible home loans originated by participating North Dakota lenders.

CHILDREN'S SERVICES COORDINATING COMMITTEE

Statewide Grants

Pursuant to NDCC Section 54-56-03 and Section 2 of 1999 House Bill No. 1014, the Budget Section received a report from the Children's Services Coordinating Committee on grants to be distributed by the Children's Services Coordinating Committee in addition to specific statewide grants approved by the 1999 Legislative Assembly. The Children's Services Coordinating Committee requested approval for distribution of \$388,942 of grants for the first year of the 1999-2001 biennium and \$243,768 for the second year. The Budget Section approved the distribution of grants as

recommended by the Children's Services Coordinating Committee in the amount of \$632,710.

**DEPARTMENT OF PUBLIC INSTRUCTION
Federal Class Size Reduction Initiative Grants**

Pursuant to Section 24 of 1999 Senate Bill No. 2013, the Budget Section received information from the Department of Public Instruction on the status of the class size reduction program. The Budget Section learned the purpose of the class size reduction program is to help schools improve student achievement by reducing class size ratios in the earliest years--kindergarten through grade 3. The class size reduction program provides funds to school districts to recruit, hire, and train fully qualified teachers who are assigned to primary grade classrooms. North Dakota was allocated \$5.6 million for school districts during 1999-2000. Of North Dakota's 229 public school districts, 186 applied to access their allocation, and 43 did not apply. North Dakota was also awarded \$6 million in class size reduction funding for 2000-01.

**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

Transfers

Pursuant to Section 2 of 1999 House Bill No. 1016, the Department of Corrections and Rehabilitation requested a transfer of appropriation authority from the Adult Services Division to the central office. The request was for a transfer to provide a salary increase for eight central office employees; additional salary adjustments for the new information technology assistant, for an administrative assistant, and for the information technology administrator; and other additional expenses relating to annual and sick leave payment, workers' compensation, and temporary salaries.

Additional 1 percent salary increase	\$3,900
Salary adjustment for new information technology assistant	3,350
Salary adjustment for administrative assistant	2,696
Salary adjustment for the information technology administrator	1,895
Other additional expenses	3,159
Total transfer request	\$15,000

The Budget Section authorized the Department of Corrections and Rehabilitation to transfer \$15,000 of appropriation authority from the Adult Services Division to the central office.

GRAND FORKS CORPORATE CENTER

Pursuant to Section 5 of 1999 Senate Bill No. 2188, the Budget Section received a request for approval for a proposed purchase option agreement for the Corporate Center in Grand Forks. The Budget Section learned the Corporate Center will consist of two buildings connected

by a skywalk and has approximately 69,000 square feet. The city of Grand Forks is constructing the building as a strategy to recover the city's central business district after the fire and flood of 1997. The city of Grand Forks and three major tenants of the Corporate Center have negotiated a lease with an option to purchase at a future date. Section 5 of 1999 Senate Bill No. 2188 requires Budget Section approval prior to the refinancing of debt, the incurring of debt for improvements, or the voluntary sale of the Corporate Center. The sale of the Corporate Center would not take place until at least 21 years from the inception of the lease; however, bonds will need to be issued to finance construction of the building. Budget Section approval was requested because bond purchasers need to be aware of any proposed sale of the building. Senate Bill No. 2188 provides that if Grand Forks makes money on the Corporate Center, after the payment of bonds or in the event the building is sold, the proceeds must be used for flood control projects.

Pursuant to the provisions of 1999 Senate Bill No. 2188, the Budget Section approved the request of the city of Grand Forks Office of Urban Development to enter into an agreement with the three initial tenants of the Corporate Center for the future sale of all or a portion of the Corporate Center as provided in the proposed purchase agreement.

**STATE GRANT PREAPPROVAL PROCESS
Survey of States**

Pursuant to 1999 Senate Concurrent Resolution No. 4050, the Budget Section studied the feasibility and desirability of implementing the grant preapproval process for state agencies except the institutions of higher education.

The Budget Section received information on the state grant preapproval processes. The Legislative Council staff surveyed the 50 states and the District of Columbia to gather information on grant preapproval processes. Of the 46 responses to the survey, seven states--California, Connecticut, Delaware, Illinois, Oregon, Wisconsin, and Wyoming--utilize a preapproval process for grants. Of the seven states that utilize a grant preapproval process:

- Five states utilize an executive branch agency or office to grant the preapproval (California, Connecticut, Illinois, Wisconsin, and Wyoming), and two states utilize a legislative committee or a committee including legislative and executive branch members to grant the preapproval (Delaware and Oregon).
- Three states subject all state agencies and institutions to the preapproval requirement (Connecticut, Delaware, and Wisconsin), one state excludes only higher education institutions (Oregon), one state excludes only agencies dealing with highways (California), and two states exclude all

agencies and institutions not under the direct control of the Governor (Illinois and Wyoming).

- Three states require preapproval for federal and private grants (Connecticut, Delaware, and Wyoming), and four states require preapproval for only federal grants (California, Illinois, Oregon, and Wisconsin).

Recommendation

The Budget Section recommends Senate Bill No. 2031 relating to the review of state agency applications for grants from the federal government and private entities. The bill includes the following provisions:

- State agencies, except institutions of higher education, will be required to receive approval before submitting an application to the federal government or a private entity for a grant that has not been approved or appropriated by the Legislative Assembly.
- To receive approval to submit an application for such a grant, a state agency will be required to forward a copy of the application, along with a report summarizing the grant, to the Emergency Commission, which will have 30 days to consider the application.
- If the Emergency Commission denies the grant application, the state agency will be allowed to submit the request to the Budget Section for consideration at its next meeting.

BOVINE TUBERCULOSIS DISEASE

Pursuant to Section 15 of 1999 Senate Bill No. 2009, the Budget Section received information from the State Veterinarian on the status and associated costs of bovine tuberculosis disease in cattle. The report indicated a herd of 123 cattle was destroyed and indemnity was paid to the producer based on the appraised value of the herd, less the salvage value and the federal indemnity. The 1999 Legislative Assembly appropriated \$65,000 for the tuberculosis case. The State Board of Animal Health has incurred costs of \$58,449 related to the case, with one additional indemnity of \$1,050 to be paid.

CORRESPONDENCE FROM ETHANOL PLANTS

Pursuant to 1999 House Bill No. 1019, the Budget Section received a report from the North Dakota ethanol plant that received production incentives from the state. The Alchem, Ltd., plant was the only plant to receive production incentives from the state during the calendar years 1998 and 1999. The Budget Section learned that after deducting payments received from the state, the Alchem, Ltd., plant did not produce a profit.

ASBESTOS ABATEMENT PROJECTS

Job Service North Dakota

Pursuant to Section 6 of 1999 House Bill No. 1017, the Budget Section received information from Job Service North Dakota on the status of its asbestos abatement project. The Budget Section learned the asbestos abatement project is estimated to cost \$2.92 million, which is \$1.77 million more than the settlement received as part of a lawsuit against an asbestos manufacturer. Federal funds have been requested for the additional \$1.77 million, but if these funds are not provided, the cost could be financed from the agency federal advance interest repayment account established in NDCC Section 52-04-22. One of the authorized uses of the agency federal advance interest repayment account is to finance major agency facility renovation projects. The sources of funds in the account are interest on delinquent contributions and penalties provided by the unemployment compensation law.

Department of Transportation

The Budget Section received information from the Department of Transportation regarding its building asbestos abatement project. The Department of Transportation's share of the settlement against an asbestos manufacturer was \$2.5 million. Preliminary cost estimates for the abatement project is estimated at \$1.5 million for the relocation of employees and in excess of \$5 million for asbestos abatement and reconstruction. The Budget Section learned the Department of Transportation will request additional funding in its 2001-03 budget for completion of the project. The Budget Section learned that when the final cost estimates are determined, a decision will have to be made as to whether the project is completed all at once, which would take 12 to 18 months, or if a phased approach should be used doing one floor at a time, which could last from four to five years.

TOBACCO SETTLEMENT COSTS AND FEE RECOVERIES

The Budget Section received a request from the Attorney General's office which had been approved by the Emergency Commission. The request was to increase the Attorney General's other funds spending authority and the grants line item by \$197,714 for funds available from cost and fee recoveries relating to the tobacco settlement case to be used for additional local gaming enforcement grants. The request was made pursuant to Section 5 of 1999 Senate Bill No. 2015, which allows the Attorney General's office to transfer between line items for the purpose of providing additional local gaming enforcement grants. The requested transfer would have been from tobacco settlement cost and fee recoveries in excess of actual costs incurred by

the Attorney General's office. The Budget Section reviewed the following:

- The legislative intent of Section 5 of 1999 Senate Bill No. 2015.
- Information presented and committee discussion during the 1999 legislative session relating to the use of tobacco settlement cost and fee recoveries anticipated to be received in excess of costs incurred by the Attorney General's office.
- Information on amounts anticipated to be received and actually received for cost and fee recoveries relating to the tobacco settlement.

The Budget Section reviewed Legislative Council staff memorandums relating to the issue. The first memorandum on *Tobacco Settlement Costs and Attorney Fees* dealt with the question of whether all moneys received by the state from the tobacco settlement, including cost and fee recovery moneys, were required by 1999 House Bill No. 1475 to be deposited in the tobacco settlement trust fund. The Budget Section learned there were two possible conclusions that could be reached concerning the appropriate handling of cost and fee recoveries under the tobacco settlement. The first conclusion is that cost and fee recoveries are part of all moneys received by the state pursuant to the judgment, and NDCC Section 54-27-25 requires those funds to be deposited in the tobacco settlement trust fund. The second conclusion is the one reached by the Attorney General's office, which is that there is nothing in the legislative history suggesting or implying that cost or fee recoveries were intended to go to the tobacco settlement trust fund. The North Dakota Supreme Court has held that Attorney General's opinions are entitled to respect, and the court will follow them if they are persuasive. The memorandum indicated an argument could be made for either case.

The second memorandum on *Local Gaming Enforcement Grants - 1999-2001* deals with the emergency request presented by the Attorney General to increase the grants line item by \$197,714 of other funds for providing additional local gaming enforcement grants. The report indicated there was no legislative intent that would preclude the use of other funds for gaming enforcement grants if approved by the Emergency Commission and Budget Section.

The Budget Section recommended the chairman of the Legislative Council request the Attorney General's office retain in the Attorney General refund fund the \$197,714 received from excess tobacco settlement legal cost and fee recoveries; that the funds be identified as required for gaming enforcement as provided for in subsection 5 of NDCC Section 54-12-18; and these moneys remain in the Attorney General's refund fund until appropriated by the 57th Legislative Assembly. The Attorney General's office later transferred these funds to the general fund.

LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

Background

The Budget Section was informed of the 13 block grant programs listed in the 1999 catalog of federal domestic assistance, only the community services block grant requires a public hearing held by the Legislative Assembly. The required public hearing will be held as part of the appropriation hearing for the Office of Management and Budget during the 2001 legislative session.

Recommendation

The Budget Section recommends Sente Concurrent Resolution No. 4002 to authorize the Budget Section to hold public legislative hearings required for the receipt of federal block grant funds during the period from the recess or adjournment of the 57th Legislative Assembly through September 30, 2003.

FEDERAL FUNDS

The Budget Section reviewed a report on federal funds anticipated to be received by state agencies and institutions for bienniums ending June 30, 2001, and June 30, 2003. The report indicated for the 1999-2001 biennium, state agencies and institutions anticipate receiving \$1.747 billion of federal funds, approximately \$70 million more than the amount appropriated. For the 2001-03 biennium, state agencies and institutions anticipate receiving approximately \$1.779 billion of federal funds. The 2001-03 biennium requests if funded would require \$262,157,269 of general fund matching dollars, \$22,968,751 more than that provided for the 1999-2001 biennium.

LEGISLATIVE COUNCIL REPORTS

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

- *An Analysis of 56th Legislative Assembly Changes to Recommended Appropriations in the Executive Budget - 1999-2001 Biennium.* The report provided information on legislative changes to the executive budget, FTE changes, major programs, and related legislation for each state agency. The report also included an analysis of various special funds and statistical information on state appropriations.
- *Irregular Salary Payments to State Employees - Related Statutes and Budget Section Action.* The memorandum indicated that NDCC Section 54-06-24 establishes a state employee suggestion incentive program that allows one-time bonus payments to state employees for approved cost-saving ideas. Section 54-14-04.3 provides that severance pay or financial incentives to encourage retirement or resignation may be paid to state employees in certain circumstances.

Section 54-14-03.1 provides that fiscal irregularities, including the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments discovered by the Office of Management and Budget must be reported to the Budget Section.

- *State Employee Bonus Programs in Selected States.*
- *1999-2001 Biennium Report on Agency Compliance with Legislative Intent.*

BUDGET TOUR REPORTS

The Budget Section reviewed memorandums summarizing the visitations of the budget committees and the budget tour groups. These memorandums will be compiled for submission to the Appropriations Committees during the 2001 legislative session.

The Budget Committee on Government Services, Senator Aaron Krauter, Chairman, toured the State Penitentiary, Missouri River Correctional Center, Youth Correctional Center, Roughrider Industries, Badlands Human Service Center, Dickinson State University, Dickinson Research Extension Center, Northwest Human Service Center, Williston State College, and Williston Research Extension Center.

The Budget Committee on Institutional Services, Representative Merle Boucher, Chairman, toured the South Central Human Service Center, Northeast Human Service Center, State Hospital, James River Correctional Center, School for the Blind, and the Developmental Center.

The Budget Committee on Human Services, Representative Jeff Delzer, Chairman, toured the West Central Human Service Center.

The Budget Committee on Health Care, Representative Clara Sue Price, Chairman, toured the North Central Human Service Center, Minot State University - Bottineau, Forest Service, Minot State University, State Fair, North Central Research Extension Center, and the International Peace Garden.

The Higher Education Committee, Senator David E. Nething, Chairman, toured the University of North Dakota, Mayville State University, Bismarck State College, North Dakota State University, State College of Science, Valley City State University, Main Research Center, and the Division of Independent Study.

AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION

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

From the June 9, 1999, meeting to the October 4, 2000, meeting, the Budget Section considered 73 requests, all of which were approved except for the

Attorney General's request to transfer funds for local gaming enforcement grants.

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

OTHER ACTION

The Budget Section received a report on a performance contracting initiative at the State College of Science. The Budget Section learned performance contracting is a method for a building owner to make capital improvements to a facility, finance all associated costs for the improvements, and receive a guarantee from a third-party contractor that the resulting operational savings will cover the debt service.

The Budget Section received a report on the development of a technology research park at North Dakota State University. The Budget Section learned the mission statement of the proposed North Dakota State University research and technology park is to achieve successful, technology-based economic development through the establishment of a park where partnerships between startup entrepreneurs, high-tech businesses, and the research of North Dakota State University will lead to the creation of new business ventures.

The Budget Section received a report on the construction of a regional technology center by the Valley City-Barnes County Development Corporation on property owned by Valley City State University. The Budget Section learned Valley City State University received permission from the State Board of Higher Education to enter into a lease agreement with the development corporation for the use of Valley City State University land. The lease will be for either 1.5 or 3.5 acres for a term of 75 years at a cost of \$1 per year. The development corporation will build and own the building and will be responsible for all related debt. Valley City State University will be a tenant in the building. The true market value of the Valley City State University's land will be used to calculate a fair price for the land lease, and the lease value of the land will be deducted from Valley City State University's lease cost each year.

The Budget Section received a report from the University of North Dakota on the issuance of revenue bonds to refinance existing lease purchase obligations and to acquire additional aircraft.

The Budget Section received a report from the Information Technology Department on the development of a business plan, pursuant to 1999 Senate Bill No. 2043. The Budget Section learned the business plan was recently completed and includes four major goals for the department:

1. To provide statewide leadership and direction for technology use.
2. To align technology with customers' business needs.
3. To provide value to the department's customers.

4. To address human resource issues, including the retention and recruitment of key technical staff.

The report also indicated that in addition to goals included in the business plan, goals for the department include:

- Maintaining a statewide perspective on information technology use so that individual agency decisions can be evaluated with a broad perspective.
- Promoting partnerships with higher education, the private sector, and state agencies.
- Establishing trust relationships with the Legislative Assembly and the department's customers.

The Budget Section received a report from the Department of Public Instruction on the new business communication specialist position hired. The Budget

Section learned the business communication specialist position replaces a federally funded director's position that was eliminated. A major element of the new position is to establish and implement guidelines and standards for the format and design of the agency's educational and informational resources. The position is also responsible for the setup and delivery of an electronic newsletter notifying schools and the public about items of educational improvement.

This report presents Budget Section activities through October 2000. Because one of the major responsibilities of the Budget Section is to review the executive budget, which by law is not presented to the Legislative Assembly until after December 1, a supplement to this report will be submitted for distribution at a later date.

APPENDIX

Pursuant to NDCC Sections 54-16-04, 54-16-04.1, and 54-16-04.2, the Budget Section considered 73 agency requests that were authorized by the Emergency Commission. All requests were approved by the Budget Section, with the exception of the request from the Attorney General as noted. The following is a list of agency requests approved through October 2000:

1. Adjutant General

- March 9, 2000 - To increase federal funds spending authority and the capital improvements line item by \$500,000 for a grant from the Federal Emergency Management Agency to expand the Fraine Barracks Emergency Operations Center addition which was authorized by the 1999 Legislative Assembly.

2. Department of Agriculture

- March 9, 2000 - To increase federal funds spending authority and the waterbank program line item by \$440,303 for a grant from the Environmental Protection Agency for waterbank program costs in the Devils Lake Basin and priority watersheds.
- June 21, 2000 - To increase federal funds spending authority by \$289,583 (\$220,833 for operating expenses and \$68,750 for salaries and wages) from the Environmental Protection Agency for the dairy pollution prevention program.

3. Attorney General

- March 9, 2000 - To increase other funds spending authority and the grants line item by \$197,714 for funds available from cost and fee recoveries relating to the tobacco settlement case to be used for additional local gaming enforcement grants.

The Budget Section asked that the chairman of the Legislative Council request the Attorney General's office retain in the Attorney General refund fund the \$197,714 received from excess tobacco settlement legal cost and fee recoveries; that the funds be identified as required for gaming enforcement as provided for in subsection 5 of NDCC Section 54-12-18; and that these moneys remain in the Attorney General refund fund until appropriated by the 57th Legislative Assembly.

4. Bismarck State College

- June 9, 1999 - To increase other funds spending authority by \$60,000 of excess tuition income for salaries and wages (\$40,000) and operating expenses (\$20,000). (Request was approved by the Emergency Commission subject to approval by the State Board of Higher Education.)

5. Children's Services Coordinating Committee

- October 27, 1999 - To increase other funds spending authority by \$448,889 to reflect a Robert Wood Johnson Foundation grant to be used for administration (\$25,000) and grants (\$423,889).

- October 27, 1999 - To increase other funds spending authority and the grants line item by \$442,851 to reflect unspent funds from the 1997-99 biennium generated through "refinancing."

6. Department of Corrections and Rehabilitation

- October 4, 2000 - To increase federal funds spending authority and the Adult Services Division victim services line item by \$525,000 to accept a grant from the Office of Victims of Crime to provide grants to victim services agencies and crime victims.

- October 4, 2000 - To increase federal funds spending authority and the Juvenile Services Division grants line item by \$1,713,400 to accept a grant from the United States Department of Justice, Office of Justice Programs, for community sanctions and other programs for juvenile offenders.

- October 4, 2000 - To increase federal funds spending authority by \$252,238 for a grant from the Department of Justice, Bureau of Justice Assistance, for costs incurred for the imprisonment of undocumented criminal aliens who are convicted of felony offenses or two or more misdemeanors.

- October 4, 2000 - To transfer \$283,032 of spending authority from the program services line item to the support services line item to reflect the department's decision to account for psychiatric evaluations and related costs at the James River Correctional Center under the support services line item rather than under the program services line item.

- October 4, 2000 - To increase other funds spending authority and the operating expenses line item by \$64,920 for the Youth Correctional Center to accept passthrough funds from the Children's Services Coordinating Committee to contract for the services of a chaplain and to provide a work program for juveniles.

7. Council on the Arts

- October 4, 2000 - To increase federal funds spending authority and the grants line item by \$101,124.75 to accept additional federal funds and carryover funds from the 1997-99 biennium for various art education programs.

8. School for the Deaf

- June 21, 2000 - To increase federal funds spending authority by \$125,006 (\$49,000 for salaries and wages, \$71,426 for operating

expenses, and \$4,580 for equipment) for the North Dakota deaf/blind services project.

9. Dickinson Research Center
 - June 21, 2000 - To increase other funds spending authority by \$419,000 (\$239,000 to repair storm damage to buildings and equipment; and \$180,000 to make capital improvements to the Out Wintering Research Facilities).
10. Department of Economic Development and Finance
 - October 27, 1999 - To increase other funds spending authority and the operating expenses line item by \$820,575 for \$452,499 of federal funds and \$368,076 of special funds to be used for the manufacturing extension partnership program.
11. Division of Emergency Management
 - March 9, 2000 - To increase federal funds spending authority by \$410,000 (\$50,000 for salaries and wages, \$35,000 for operating expenses, \$325,000 for grants) for a grant from the United States Department of Justice to enhance state and local capabilities to respond to domestic terrorism.
 - October 4, 2000 - To increase federal funds spending authority by \$40,068,995 (\$39,500,000 for grants, \$375,300 for salaries and wages, \$156,540 for operating expenses, and \$37,155 for equipment) to accept funds from the Federal Emergency Management Agency (FEMA) for the expenses associated with flood disasters in 1996, 1997, 1998, and 1999.
 - October 4, 2000 - To increase federal and state loan funds spending authority by \$49,727,698 (\$49,486,310 for grants, \$206,238 for salaries and wages, \$30,150 for operating expenses, and \$5,000 for equipment) to accept funds from FEMA (\$43,460,475) and a Bank of North Dakota loan (\$6,267,223) for expenses associated with flooding during the spring and summer of 2000.
12. Game and Fish Department
 - June 9, 2000 - To increase federal funds spending authority and the Lonetree Reservoir line item by \$65,000 for the operation and management of the Lonetree area.
13. State Department of Health
 - October 27, 1999 - To increase federal funds spending authority by \$733,000 for salaries and wages (\$66,700), operating expenses (\$151,000), equipment (\$180,300), and grants (\$335,000) for the following programs--public health preparedness and response for bioterrorism, to reduce the burden of arthritis and other rheumatic conditions, and to increase booster seatbelt use among children.
- June 21, 2000 - To increase federal funds spending authority by \$725,100 (\$85,800 for salaries and wages - FTE positions authorized by the Emergency Commission for duration of federal funding, \$12,500 for operating expenses, \$16,800 for equipment, and \$610,000 for grants for tobacco use prevention and bioterrorism programs).
14. Highway Patrol
 - June 21, 2000 - To increase federal funds spending authority by \$720,000 for field operations to accept federal passthrough funds from the Department of Human Services to be used for programs related to the enforcement of underage drinking.
 - June 21, 2000 - To increase federal funds spending authority by \$630,000 for field operations to accept federal funds for the Upper Great Plains Transportation Institute at North Dakota State University (\$500,000 for the development of a system related to border checks on drivers and vehicles, \$90,000 for the development of a business plan and study the feasibility of new technology relating to the motor carrier industry, and \$40,000 for a study of commercial vehicle accidents in North Dakota).
 - June 21, 2000 - To increase federal funds spending authority by \$754,000 for field operations to accept federal funds for the Upper Great Plains Transportation Institute at North Dakota State University to develop Aspen, a computer software package, that will assist state and federal law enforcement agencies in the safety inspection of commercial vehicles.
 - October 4, 2000 - To increase federal funds spending authority and the field operations line item by \$100,000 to accept passthrough funds from the Department of Transportation to purchase digital cameras for Highway Patrol officers.
15. State Historical Society
 - October 27, 1999 - To increase federal funds spending authority by \$89,391 for salaries and wages (\$21,679), operating expenses (\$67,597), and equipment (\$115) for preliminary planning and design of an interpretive center at Fort Buford, a Historical Records Advisory Board's development plan, and a shelving project.
 - March 9, 2000 - To increase federal funds spending authority and the operating expenses line item by \$250,000 for a grant from the National Historical Publications and

Records Commission for research and the cataloging of records relating to the Fort Buford state historic site.

- October 4, 2000 - To increase federal funds spending authority and the capital improvements line item by \$480,000 to accept pass-through funds from the Department of Transportation to be used for improvements at Fort Abercrombie.

16. Department of Human Services

- October 27, 1999 - To transfer general fund spending authority of \$5.5 million from program and policy (Subdivision 3) to economic assistance (Subdivision 2) and to transfer federal funds spending authority of \$5.5 million from economic assistance (Subdivision 2) to program and policy (Subdivision 3) to meet federal maintenance of effort requirements for the temporary assistance for needy families (TANF) grant.
- October 27, 1999 - To increase federal funds spending authority for the Northeast Human Service Center by \$85,100 for a retired and senior volunteer program.
- March 9, 2000 - To increase federal and other funds spending authority and the salaries and wages line item of the economic assistance subdivision by \$219,160 for funds available from federal child support enforcement funding (\$144,645) and the department operating fund (\$74,515) to correct a shortage in salaries and wages funding and to provide funding for additional costs relating to the completion of the computerized fully automated child support enforcement system.
- March 9, 2000 - To transfer \$2 million from the operating expenses line item of the program and policy subdivision to the Northwest Human Service Center (\$400,000), the Lake Region Human Service Center (\$400,000), the Northeast Human Service Center (\$400,000), the South Central Human Service Center (\$400,000), and the Badlands Human Service Center (\$400,000) to provide services to severely emotionally disturbed children in each region.
- March 9, 2000 - To transfer within the management and councils subdivision \$221,131 from operating expenses to salaries and wages (\$53,914) and grants (\$167,217) and to transfer within the economic assistance subdivision \$34,729 from operating expenses to salaries and wages to provide additional funding for temporary salaries for the Medicaid/TANF computer project and to allow certain counties to acquire new computers with the speed and capacity

necessary to operate the system being developed.

- March 9, 2000 - To increase federal funds spending authority by \$426,000 (\$317,000 for operating expenses within the management and councils subdivision and \$109,000 for operating expenses within the program and policy subdivision) for a grant from the Social Security Administration for a computerized system to process disability claims.
- March 9, 2000 - To increase federal funds spending authority by \$1.2 million (\$151,000 for salaries and wages, \$43,000 for operating expenses, and \$1,006,000 for grants) for a grant from FEMA to provide counseling and assistance to persons living in areas included in the June 1999 presidential disaster declaration.
- March 9, 2000 - To increase federal and other funds spending authority and the grants - medical assistance line item of the economic assistance subdivision by \$24,628,405 for funds available from Medicaid funding (\$17,357,920) and a loan from the Bank of North Dakota (\$7,270,485) for making government nursing facility funding pool payments, pursuant to Section 4 of 1999 Senate Bill No. 2168.
- June 21, 2000 - To increase federal funds spending authority for grants by \$552,000 to use carryover funds from year five of the partnership program and to allow expenditure of those funds during the 1999-2001 biennium.
- June 21, 2000 - To increase federal funds spending authority by \$417,135 to accept a grant (\$360,000) and to utilize unspent funds carried over from the 1997-99 biennium (\$57,135) for operating expenses associated with programs to combat underage drinking.
- June 21, 2000 - To increase federal and other funds spending authority by \$2,193,860 (\$439,632 for operating expenses and \$1,754,228 for grants); to accept federal funds (\$439,632) for substance abuse and treatment, \$907,717 for expansion of services to the refugee population, and \$307,353 from the federal independent living program; and to accept other funds (\$539,158) from the Bush Foundation for training of infant and toddler caregivers.
- June 21, 2000 - To increase other funds spending authority by \$2,218,429 from the health care trust fund to support the development of basic care facilities, assisted living facilities, and other alternatives to nursing facility care.

- August 18, 2000 - To increase federal and other funds spending authority and the grants - medical assistance line item of the economic assistance subdivision by \$24,653,060 of federal Medicaid funding (\$17,360,685) and a loan from the Bank of North Dakota (\$7,292,375) for making government nursing facility funding pool payments, pursuant to Section 4 of 1999 Senate Bill No. 2168.
 - October 4, 2000 - To increase federal funds spending authority by \$205,100 (\$160,000 for salaries and wages and \$45,100 for operating expenses) to accept funds from FEMA to provide crisis counseling for Devils Lake area residents recovering from a severe wind-storm and for residents in the Grand Forks and Fargo areas recovering from heavy rainfall and subsequent flooding.
 - October 4, 2000 - To increase federal funds spending authority and the grants line item by \$288,925 to accept funds from the Social Security Administration to process an increased number of disability determinations being requested by claimants.
 - October 4, 2000 - To increase federal funds spending authority and the grants line item by \$1.3 million to expend a larger portion of the federal fiscal year 2001 grant award during the current biennium to serve an increased number of vocational rehabilitation clients.
 - October 4, 2000 - To increase the federal funds spending authority by \$260,000 (\$35,000 for operating expenses, \$30,340 for equipment, and \$194,660 for grants) to accept funds from the Department of Education for Vocational Rehabilitation - Older Blind Services.
 - October 4, 2000 - To transfer \$249,780 from the Northwest Human Service Center to the operating expenses line item of the information management program of the management and councils subdivision for increased costs relating to the statewide area network upgrade.
17. Information and Technology Department
- October 4, 2000 - To increase other funds spending authority by \$1.5 million (\$1.1 million for operating expenses and \$400,000 for equipment) to accept pass-through funds from Job Service North Dakota to provide computer application services to Job Service, which will allow services to be provided to citizens via the Internet.
 - October 4, 2000 - To increase other funds spending authority by \$4,062,800 (\$1,642,400 for operating expenses and \$2,420,400 for equipment) to accept funds from agencies to implement a statewide area network for voice, video, and data as mandated by 1999 Senate Bill No. 2043.
18. Office of Intergovernmental Assistance
- October 4, 2000 - To increase other funds spending authority and the operating expenses line item by \$1 million to accept funds from agencies to provide outside vendor contractual services on behalf of state agencies.
- June 9, 2000 - To increase federal funds spending authority and the grants line item by \$2 million for the low-income home energy assistance program (\$1 million) and the weatherization assistance program (\$1 million).
19. Job Service North Dakota
- June 9, 1999 - To increase other funds spending authority and the new jobs program line item by \$12,900 of additional administrative revenue relating to the new jobs program.
 - June 9, 1999 - To increase federal funds spending authority and the grants line item by \$404,000 for providing classroom training, relocation, and job search assistance for trade-affected North Dakota workers.
 - March 9, 2000 - To increase other funds spending authority by \$80,000 (\$10,000 for salaries and wages, \$70,000 for grants) for a grant from the Grand Forks Office of Urban Development for youth employment and education activities.
 - March 9, 2000 - To increase other funds spending authority by \$63,028 (\$7,958 for salaries and wages, \$2,663 for operating expenses, \$52,407 for grants) for a grant from the veterans' postwar trust fund to assist eligible veterans in obtaining employment.
20. Parks and Recreation Department
- June 9, 1999 - To increase federal funds spending authority and the natural resources line item by \$250,000 for improvements of the On-A-Slant Mandan Indian Village at Fort Lincoln State Park.
 - March 9, 1999 - To increase federal funds spending authority by \$1 million (\$500,000 for the natural resources program line item, \$500,000 for the recreation program line item) for grants from:
 - The National Park Service (\$400,000) for Phase II of the On-A-Slant Mandan Indian Village project.
 - The Federal Emergency Management Agency (\$100,000) for campground development costs relating to Devils Lake.

The national recreation trails program (\$300,000) for increased funding available for the recreation program.

The land and water conservation fund (\$200,000) for additional funding available for the recreation program.

- October 4, 2000 - To increase federal funds spending authority and the natural resource line item by \$1.4 million for a grant from FEMA for flood damage at the Turtle River State Park and for authority to obtain an emergency disaster loan of up to \$1.4 million from the Bank of North Dakota pursuant to NDCC Section 54-16-13.
- October 4, 2000 - To increase other funds spending authority by \$185,000 (\$60,000 for a Fort Lincoln interpretive program, \$35,000 for equipment, \$32,000 for seasonal salaries, \$33,000 for park operating expenses, and \$25,000 for additional ATV safety and educational programs).

21. Department of Public Instruction

- March 9, 2000 - To increase federal funds spending authority and the operating expenses line item by \$80,000 for a grant from the National Center for Education Statistics to contract for the development of an on-line reporting system to be used by schools to report data to the department.
- March 9, 2000 - To increase federal funds spending authority by \$116,469 (\$14,550 for salaries and wages, \$96,919 for operating expenses, \$5,000 for equipment) for a grant from the United States Department of Agriculture to assist certain school districts in transitioning to a new reporting system for free and reduced price meals.
- March 9, 2000 - To increase federal funds spending authority and the grants line item by \$340,000 for a grant from the United States Department of Health and Human Services to provide tutoring and extracurricular activities for refugee students, to provide training to educational personnel dealing with refugee students, and to establish a state advisory committee.
- March 9, 2000 - To increase other funds spending authority and the operating expenses line item by \$600,000 for payments from local school districts for processed food costs billed to the department rather than individual districts in order to achieve cost-savings.
- March 9, 2000 - To increase federal funds spending authority by \$600,000 (\$116,388 for salaries and wages, \$63,612 for operating expenses, \$420,000 for grants) for a grant

from the United States Department of Education to establish character education programs in schools.

- October 4, 2000 - To increase federal funds spending authority and the operating expenses line item by \$420,000 for funds available from the United States Department of Agriculture to develop a web-enabled computer system for the management and administration of federal nutrition programs.

22. Public Service Commission

- June 9, 1999 - To increase federal funds spending authority and the operating expenses line item by \$35,000 for contracted services to eliminate safety hazards at an abandoned underground mine.

23. State Radio Communications

- June 9, 1999 - To transfer \$204,891 to the operating expenses line item from equipment (\$158,891) and salaries and wages (\$46,000) for expenses relating to the mobile data terminal project.
- October 27, 1999 - To increase other funds spending authority by \$84,855 for operating expenses (\$44,855) and equipment (\$40,000) for a computerized identification system to be integrated with the Federal Bureau of Investigation's data base.
- December 9, 1999 - To increase other funds spending authority by \$54,385 of federal funds from the Attorney General's office for operating expenses (\$17,885) and equipment (\$36,500) for a computerized identification system that will be integrated with the Federal Bureau of Investigation's national data base.

24. Secretary of State

- To increase other funds spending authority by \$120,000 (\$56,300 for salaries and wages, \$39,700 for operating expenses, and \$24,000 for equipment) from the general services operating fund to provide better and faster services for the public.

25. Tax Department

- March 9, 2000 - To increase other funds spending authority and the motor fuels federal grant line item by \$100,000 for a grant from the Department of Transportation for fuel tax compliance programs and a dyed fuel enforcement program in cooperation with the Department of Transportation and the Highway Patrol.

26. Department of Transportation

- October 4, 2000 - To increase federal funds and other funds spending authority by \$32,917,495 for funds available from the Federal Highway Administration and FEMA (\$7,023,400), the Federal Highway

Administration (\$994,095), and cities and counties (\$24,900,000) for flood-related work performed in the Devils Lake Basin and other areas of the state.

27. State Water Commission

- June 21, 2000 - To increase federal and other funds spending authority by \$395,000

(\$325,000 of federal funds from the Division of Emergency Management; \$60,000 of other funds from Devils Lake area entities for the Devils Lake outlet awareness manager; and \$10,000 of federal funds from FEMA for equipment related to dam safety).

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Budget Committee on Government Services was assigned responsibilities in eight areas. Section 8 of House Bill No. 1004 provided that the Legislative Council study the State Department of Health master plan for its facilities. Senate Concurrent Resolution No. 4006 directed the Legislative Council to study state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural areas. Section 2 of Senate Bill No. 2411 directed the Legislative Council to study privatizing and contracting for services provided by state agencies. Senate Concurrent Resolution No. 4030 directed the Legislative Council to study the management responsibilities of the Industrial Commission, the mission and location of each entity within and under the direction of the Industrial Commission, and the membership and voting structure of the Industrial Commission. Based on a Legislative Council directive, the committee was assigned the responsibility of monitoring the status of state agency appropriations.

Section 6 of Senate Bill No. 2012 provided that the Legislative Council receive reports from the Department of Human Services on any hiring of full-time equivalent (FTE) positions at the human service centers, State Hospital, and Developmental Center in addition to those authorized by the Legislative Assembly for the 1999-2001 biennium. North Dakota Century Code Section 54-40-01 provides that between legislative sessions a committee of the Legislative Council may approve any agreement entered into by a state agency with the state of South Dakota to form a bistate authority to jointly exercise any function the agency is authorized to perform by law. Section 5 of House Bill No. 1383 provided that the Legislative Council receive financial statements and a report from the governing board overseeing any housing development fund established in the state. These responsibilities were assigned to the committee.

Committee members were Senators Aaron Krauter (Chairman), John Andrist, Bill L. Bowman, Ed Kringstad,

Kenneth Kroeplin, Elroy N. Lindaas, and John T. Traynor and Representatives April Fairfield, Pat Galvin, Bette Grande, Robert Huether, Roxanne Jensen, James Kerzman, Matthew M. Klein, Myron Koppang, Chet Pollert, Wanda Rose, Ben Tollefson, Janet Wentz, and Lonny B. Winrich.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

STATE DEPARTMENT OF HEALTH FACILITIES PLAN

Section 8 of House Bill No. 1004 required the State Department of Health to develop a master plan for its facilities; to develop a definitive plan and firm cost estimates for upgrading the department's laboratory facilities, for providing a state morgue for the State Medical Examiner, and for bringing the department's facilities into compliance with applicable building code requirements; and to submit the plans to the Legislative Council for it to study.

1999 Legislative Action

The 1999-2001 executive budget recommended \$3 million of bonding authority for the State Department of Health for constructing a facility for the State Medical Examiner and state laboratories. The Legislative Assembly did not approve the request for a \$3 million bonding authority and instead appropriated \$45,000 from the general fund for the department to develop a master plan for its facilities and report to the Legislative Council during the 1999-2000 interim.

Current State Department of Health Facilities

The committee conducted a tour of each of the State Department of Health facilities. The following schedule presents information on each of the State Department of Health facilities:

	Owned/ Leased	Total Square Feet in Building	Number of Employees in Building	Primary Department Program or Section	Annual Rent	Rental Cost Per Square Foot
State Capitol - Judicial Wing 600 East Boulevard Avenue Bismarck	State-owned	33,658	119	State Health Officer Administrative Services Health Resources Preventive Health	\$99,168	\$2.95
Storage	State-owned	1,164	0			
Missouri Office Building 1200 Missouri Avenue Bismarck	Leased	22,508	104	Environmental Health Section	213,276	9.48
Microbiology Laboratory 1205 Avenue A West Bismarck	Leased	6,720	17	Microbiology	88,151	12.38
Garage - Storage	Leased	400	0			

	Owned/ Leased	Total Square Feet in Building	Number of Employees in Building	Primary Department Program or Section	Annual Rent	Rental Cost Per Square Foot
White House 1220 Missouri Avenue Bismarck	Leased	2,122	8	Municipal facilities	14,808	6.98
East Laboratory 2635 East Main Bismarck	State-owned	20,851	35	Forensic Examiner Toxicologist Crime Laboratory Chemistry	0	
Environmental Training Center 2639 East Main Bismarck	State-owned	5,944	7	Training facility	0	
	State-owned	61,617	161		\$99,168	N/A
	Leased	31,750	129		316,235	\$9.96
Total		93,367	290		\$415,403	N/A

The committee received information on the results of assessments conducted by the State Department of Health of its current facilities. The committee learned a number of deficiencies were found in the various facilities including:

1. Judicial Wing offices - Minor additional space is required for services housed offsite and for additional storage and file space.
2. Missouri Office Building and White House - A number of significant deficiencies relating to code compliance and physical space needs were identified including:
 - a. Lack of handicapped accessibility compliance.
 - b. Lack of proper fire rating of corridors and doorways.
 - c. Inadequate condition and capacity of heating and ventilation systems.
 - d. Inappropriate use of corridors and exit ways as office workspace.
 - e. Inadequate workspace for staff work areas.
 - f. Inefficiencies caused by municipal facilities division staff located at noncollocated facilities.
3. Environmental Training Center
 - a. Lack of adequate support and resource areas for the staff occupying the building.
 - b. Inefficiencies caused by the staff located at noncollocated facilities.
4. Microbiology Laboratory building
 - a. Inadequate ventilation system.
 - b. Lack of adequate workspace.
 - c. Noncompliance with building code.
 - d. Lack of handicapped accessibility compliance.
5. East Laboratory building
 - a. Inadequate ventilation system.
 - b. Lack of adequate workspace.
 - c. Noncompliance with building code.
 - d. Lack of handicapped accessibility compliance.

State Morgue and Medical Examiner

As authorized by the 1995 Legislative Assembly, the State Department of Health hired the State Medical Examiner in August 1996. The State Medical Examiner was housed in the East Laboratory facility and utilized the morgues of St. Alexius Medical Center and Medcenter One on a six-month rotating basis. Initially, these hospitals offered the use of their morgues until the State Department of Health could provide a permanent facility for the State Medical Examiner and staff. In November 1998, St. Alexius Medical Center discontinued providing the state use of its morgue facilities. During the 1999-2000 interim, the State Department of Health constructed a temporary morgue in the department's Environmental Training Center facility.

The committee considered the following options for housing the State Medical Examiner:

1. Renting or purchasing and converting an existing building.
2. Constructing a new facility.
3. Collocating the office with the University of North Dakota School of Medicine and Health Sciences in Bismarck or Grand Forks.

The committee heard testimony from representatives of the State Department of Health, the University of North Dakota School of Medicine and Health Sciences, the Office of Management and Budget, the judicial branch, the Bureau of Criminal Investigation, the North Dakota Sheriffs and Deputies Association, the North Dakota Chiefs of Police Association, the North Dakota Medical Association, and the North Dakota State's Attorneys Association. Based on the testimony received, the following options with corresponding advantages and disadvantages were identified for:

1. Locating the state morgue and State Medical Examiner under the State Department of Health in Bismarck:
 - a. Advantages:
 - (1) A central location is important to meet the needs of the entire state.
 - (2) The State Medical Examiner's office works closely with the crime laboratory

and toxicology laboratory, which are located in Bismarck.

- (3) The State Medical Examiner's office frequently uses other State Department of Health laboratories and works with other state agencies located in Bismarck, including the Bureau of Criminal Investigation.
- (4) Law enforcement has developed a partnership with the State Department of Health.

b. Disadvantages:

- (1) None were identified.

2. Locating the state morgue and State Medical Examiner at the University of North Dakota School of Medicine and Health Sciences in Grand Forks:

a. Advantages:

- (1) Space is available in the current facility that could be remodeled at an estimated cost of \$750,000.
- (2) Additional support services such as slide processing, photography, and library facilities would be accessible to the State Medical Examiner.
- (3) First- and second-year medical students and allied health students and faculty could observe autopsies.
- (4) Heating, cooling, and utility costs would be provided to the state morgue at no cost since it would be located in the medical school.
- (5) It may be easier to recruit specialized physicians to North Dakota to serve in the State Medical Examiner's office if it is located at the state's medical school.
- (6) Access to human tissues for researchers may be possible.

b. Disadvantages:

- (1) The State Medical Examiner and other personnel would need to relocate to Grand Forks.
- (2) Toxicology specimens would need to be sent by Federal Express to Bismarck, at an additional cost.
- (3) The State Medical Examiner and morgue would not be centrally located.
- (4) Access by the State Medical Examiner to the crime and toxicology laboratory and other state agencies located in Bismarck would be more difficult.
- (5) Autopsies may be delayed if the State Medical Examiner also has teaching responsibilities.
- (6) Families of the deceased are sometimes unhappy with the fact that an autopsy must be performed. These

families may be more upset if they feel their loved ones are being used for training purposes.

The committee reviewed the number of autopsies conducted by the State Medical Examiner:

Fiscal Year	Number of Autopsies
1998	167
1999	202
2000	185

The committee reviewed the number of autopsy requests received by county for the period August 1996 through December 10, 1999, and learned the following counties had the most referrals to the State Medical Examiner:

County	Number of Autopsy Referrals
Burleigh	135
Cass	101
Stutsman	31
Grand Forks	30
Rolette	28
Barnes	24
Morton	20

State Department of Health Facilities Plan Options

Master Plan Option

The State Department of Health contracted with the architectural firm of Triebwasser, Helenske, and Associates of Fargo for the development of the department's facility master plan. The Fargo firm also utilized the services of Earl Walls Associates from San Diego, California, a firm specializing in laboratory planning and design. The department received a \$35,000 grant from the federal Environmental Protection Agency to supplement the \$45,000 of general fund moneys appropriated to the department for developing its master plan. The committee learned a number of options were considered involving the renovation of selected facilities and for construction of replacement facilities.

The department is currently housed in six facilities located on separate sites in the city of Bismarck. The facilities consist of approximately 92,000 square feet of building area excluding storage space. The master plan option provides for a total of approximately 141,000 square feet, 49,000 square feet more than the department's current square footage. Functions relating to the laboratory and state morgue represent approximately 46 percent of the total space needs, and 54 percent relates to the department's administrative and support functions. The master plan option utilizes department-owned facilities by constructing a series of additions to the existing facilities. All department programs, except for the Division of Vital Records, would be collocated at the East Laboratory facility site in Bismarck. The microbiology and chemistry laboratories would be housed in a new addition linking the current East Laboratory building and the training center. The

East Laboratory building would be renovated to house the crime and toxicology division. State morgue facilities would be accommodated by constructing an addition to the East Laboratory facility. The Environmental Health and Judicial Wing offices would be located in an expansion of the new laboratory addition at the East Laboratory site. The Division of Vital Records would remain in the State Capitol complex.

The master plan option assumes that:

1. The State Medical Examiner and morgue will remain in Bismarck and be affiliated with the State Department of Health.
2. The crime and toxicology laboratory will remain affiliated with the department.
3. Department staff will not increase by more than 11 FTEs over the next 10 years.
4. Land located east of the East Laboratory building currently owned by the State Penitentiary will be transferred to the department without cost.

The master plan option achieves the following goals and objectives:

1. Resolves life safety needs of the current laboratory work environment.
2. Makes use of current facilities and property.
3. Achieves collocation of the department's divisions.

The following schedule presents the total space included in the master plan option:

Department Function	Square Feet
Administrative, excluding Division of Vital Records	75,403
Microbiology Laboratory	12,710
Chemistry Laboratory	20,750
Occupational Safety and Health Administration air and water laboratories	3,081
Crime and toxicology laboratory	20,851
State morgue	5,019
Shared department storage	3,000
Total	140,814

The estimated cost of the master plan option totals \$29.9 million, to be spent over three bienniums. The committee reviewed implementation of the master plan option:

2001-03 Biennium - Phase 1	
July 2001	Authorize design and engineering
June 2002	Construction contract bidding of Phase 1
July 2002	Issue construction contracts on Phase 1
June 2003	Complete 75 percent of Phase 1 construction
Total biennium funding - \$9,450,000	
2003-05 Biennium - Phase 2	
July 2003	Carry over 25 percent of Phase 1 construction contract and begin Phase 2
August 2003	Construction contract bidding of Phase 2
September 2003	Issue construction contracts on Phase 2

December 2003	Complete construction on Phase 1
December 2004	Complete construction on Phase 2
January 2004	Occupy Phases 1 and 2
Total biennium funding - \$9,450,000	
2005-07 Biennium - Phase 3	
July 2005	Authorize Phase 3
August 2005	Construction contract bidding of Phase 3
September 2005	Issue construction contracts on Phase 3
December 2006	Complete construction on Phase 3
January 2007	Occupy Phase 3
Total biennium funding - \$11,000,000	

The committee reviewed the cost estimates and the biennial payment schedules associated with the plan. The committee learned the department's proposed 2001-03 budget includes \$965,000 of costs associated with facility leases. Of this amount, \$318,500 is to be provided from the general fund and \$646,500 from federal funds. The committee learned the annual debt service cost on bonds issued for the proposed project begin at approximately \$1.8 million per year, and increase to \$2.9 million per year at the conclusion of Phase 3. Over the 20-year life of the bonds, the committee learned the state would pay a total of \$54.8 million for the new State Department of Health facilities.

Alternative Facilities Plan

The committee learned at its final meeting of an alternative to the master plan option of the State Department of Health that involves the department purchasing the former Heartview Foundation facility in west Mandan from Southwest Key, Inc. The facility consists of a main building and two adjoining wings, a guest house, and a maintenance building. The main building was constructed in 1978, the southwest wing in 1984, and the southeast wing in 1989. The main building and wings contain approximately 81,000 gross square feet of space.

The committee learned the listed price for the facility is \$1,750,000. The department estimates it could purchase the facility and convert the space to office space and a training facility for \$3 million, build a microbiology and chemistry laboratory facility at the Heartview Foundation location for \$10 million, convert the department's existing training facility for use as the state morgue (estimated cost not available), and remodel the East Laboratory facility to house the crime laboratory, including forensics and toxicology (estimated cost not available). Under this option, the department would vacate its space in the Judicial Wing of the State Capitol except for the Vital Records Division. A total cost estimate for this alternative plan was not available when the committee concluded its study. The department plans to continue to review the related costs and other issues associated with this alternative and have the information available during the 2001 Legislative Assembly.

Privatizing or Sharing Laboratory Services

The committee received information from the State Department of Health on the possibilities for privatizing laboratory services, sharing laboratory services with South Dakota, and possibilities for telecommuting by employees of the department. Regarding privatizing laboratory services, the committee learned it may not be appropriate to privatize laboratory services of the department because:

1. North Dakota has no private sector crime laboratory performing forensic or toxicological evidence analysis.
2. It is not appropriate to privatize the crime laboratory due to custody of evidence requirements.
3. None of the six privately operated chemistry laboratories in the state can provide all the analytical services for the variety of samples obtained by the department.
4. It is important for staff members who gather samples for analysis to interact with laboratory staff.
5. It is important for the department to have the flexibility to react quickly to nonroutine critical health and environmental problems.

The committee reviewed the possibilities of contracting or sharing laboratory services with South Dakota. The committee learned South Dakota did not indicate an interest in sharing services or conducting laboratory tests on a contractual basis with the state of North Dakota because:

1. The primary role of a state laboratory is to provide service to the public that is accessible, independent, and trustworthy.
2. The cost to ship samples from one state to the other would increase the cost of laboratory services.

Conclusion

The committee did not make a specific recommendation regarding the master plan option of the department or the alternative plan to purchase the former Heartview Foundation facility in Mandan but requested the Legislative Council chairman to ask the State Department of Health to further explore the possibility of purchasing the former Heartview Foundation facility in Mandan from Southwest Key, Inc., and to identify other possible uses for any excess space within the facility and that the department's findings and recommendations be presented to the 57th Legislative Assembly. The Legislative Council chairman sent the State Department of Health a letter on October 17, 2000, reporting the committee's request.

STATE AGENCY OFFICE SPACE STUDY

Senate Concurrent Resolution No. 4006 directed the Legislative Council to study state agency office space needs to determine the feasibility and desirability of

transferring state agencies or state employees to rural areas.

State Agency Space Utilization

The committee reviewed each state agency's office locations, number of FTE positions at each location, types of jobs performed at each location, and the agency's dependence on technology. The committee learned most state agency FTE positions are located in the following counties:

County	Number of Agencies	Number of FTE Positions
Burleigh	57	4,135
Grand Forks	17	2,573
Cass	28	1,943
Stutsman	13	823
Ward	21	737
Walsh	8	518
Stark	18	430
Richland	10	385
Ramsey	15	370
Williams	16	245
Barnes	9	230
Traill	3	133
Morton	7	111

The attached appendix contains a map showing the number of agencies and FTEs located in each county of North Dakota.

The committee reviewed state agency leases by county. The committee learned during the 1999-2001 biennium, state agencies were leasing 552,446 square feet of space at an annual cost of \$4,843,653. The statewide average annual cost per square foot of state agency leases was \$8.77.

Vacant Buildings Available for Use

The committee heard testimony from representatives of the Department of Economic Development and Finance and the Department of Public Instruction regarding the availability of vacant buildings in rural areas of the state. The Department of Economic Development and Finance has a data base of buildings across the state available for potential business space. The information is provided to the department by local development corporations and is available for both in-state and out-of-state companies and organizations to use when seeking additional space.

The committee learned, based on a survey of all school districts by the Department of Public Instruction, the following communities indicated a vacant school building is available for other use--Tolley, Tioga, Jamestown, Grafton, Galesburg, Portland, Rutland, Overly, New Rockford, Leonard, Strasburg, Park River, Karlsruhe, Jud, Napoleon, Keene, and Carpio.

Job Location Cost Comparison

The committee reviewed the estimated costs of locating an employee in an urban part of North Dakota compared to a rural part of the state. The committee

learned North Dakota State University conducted a study comparing costs of a five-employee office and a 10-employee office at various locations in North Dakota. The cost comparison includes the Bismarck metropolitan service area (MSA), which includes Burleigh and Morton Counties, and locations in the far west, west central, east central, and far east sections of North Dakota. The far east section excludes Cass and Grand Forks Counties. The schedule below presents the projected total annual expenses and annual savings relative to the Bismarck MSA for a five-employee office.

Location	Total Expenses	Savings Relative to Bismarck MSA
Bismarck MSA	\$140,658	\$0
Far west	\$134,454	\$6,204
West central	\$115,788	\$24,870
East central	\$114,696	\$25,962
Far east	\$117,407	\$23,251

The schedule below presents the projected total annual expenses and annual savings relative to the Bismarck MSA for a 10-employee office.

Location	Total Expenses	Savings Relative to Bismarck MSA
Bismarck MSA	\$266,191	\$0
Far west	\$259,163	\$7,028
West central	\$220,733	\$45,458
East central	\$217,080	\$49,111
Far east	\$220,958	\$45,233

Information Technology Considerations

The committee reviewed the options that technology provides for locating employees away from a central office setting. The committee learned all counties, to some extent, are connected to the state's wide area network. Telephone services through the Information Technology Department are available anywhere in the state. Senate Bill No. 2043, approved by the 1999 Legislative Assembly, provides for the expansion and enhancement of the Information Technology Department's wide area network. The committee learned once the enhanced statewide network is implemented, the broad band network will allow for data, video, and possibly voice to be transmitted over the same network, which will allow for video conferencing by state agencies. The committee learned the technology is available to support virtually any function of an agency to be performed offsite.

Job Supply and Demand

The committee received information from representatives of Job Service North Dakota on the classification of job types across the state that are in demand. The committee learned North Dakota, in December 1999, had approximately 3,000 job openings. The major areas of lower paid jobs that were in demand included food service workers, health care workers, cashier/teller positions, and commission sales positions. Higher paid positions that were in most demand included carpenters,

plumbers, truck drivers, computer systems technical support positions, computer analysts, computer programmers, and computer system developers.

Examples of Telecommuting

The committee reviewed examples of state employees telecommuting or state agencies contracting for services in rural areas. The committee learned the Department of Human Services electronic benefits transfer coordinator works from an office in the Bottineau County Courthouse (the employee had previously been located in the State Capitol). The department began this arrangement in order to retain a valued employee. The department obtained office space in the Bottineau County Courthouse, and with e-mail, faxes, and telephones, communication has not been a problem. The committee learned the employee travels to Bismarck two or three days per month, and the arrangement is working well.

The committee learned the Information Technology Department contracts with a private firm for computer programming services involving five programmers in Watford City. The committee received additional information on the technology developments in Watford City and McKenzie County. The committee learned this development has resulted from a partnership between the school district, county, and city. The entities shared the cost of installing a wireless system that provides high-speed technology services to the area. The committee learned the community has been successful in attracting a number of private companies relying on technology, including Cross Consulting, the company under contract with the Information Technology Department.

The committee toured the technology development areas in Watford City including the high school, Cross Consulting, and the county courthouse. The committee learned the community is in the process of changing its wireless system to a fiber optics system.

Budget Request Forms - Agency Telecommuting Analysis

The committee learned that at the request of the chairman of this committee, the Budget Section, at its December 1999 meeting, approved a motion asking the Office of Management and Budget to provide information in the executive budget on each agency's analysis of the feasibility of locating new FTE positions, new programs, or new capital construction away from the agency's central office setting.

The committee reviewed the telecommuting analysis form developed by the Office of Management and Budget that state agencies completed as part of their 2001-03 biennium budget request. The committee learned the form is completed by state agencies requesting new positions, vacant positions that are pending reclassification, positions that will be relocated

due to construction, purchase, or lease of new office space; and positions that will be assigned to new programs. The form requests information on the title and grade level of the new position, salary range, a description of the position's job tasks, and comparisons of costs and benefits of locating the position within a central office setting compared to away from a central office setting of the agency. The committee reviewed examples of completed forms for select state agencies submitted as part of the agencies' 2001-03 biennium budget requests.

County Government Space

The committee received information on efficiencies that may result from providing state government services at county courthouses utilizing county staff. The committee learned counties have an availability of office space and a willingness to cooperate in providing state services. The office space is generally well-equipped and handicapped-accessible. The committee was informed all county courthouses have computer access to the North Dakota Information Network, generally good telephone systems, and ample parking. Most counties already provide office space to state, federal, and private entities, and many counties would be willing to either reduce rent or charge no rent.

County Treasurers Administering Motor Vehicle Registrations

The committee heard presentations from representatives of the North Dakota County Treasurers Association of a proposal involving county treasurers administering motor vehicle registration or driver's license services. The committee learned after discussions with the Department of Transportation, the County Treasurers Association chose to focus its efforts on a pilot project involving county treasurers administering motor vehicle registration programs because the driver's license function is more complicated and because the driver's license program requires certified examiners.

The committee learned approximately 70 percent of motor vehicle registrations are processed by mail, 25 percent at one of the department's 13 branch offices, and five percent at the central office in Bismarck. The department's branch offices are located in Beulah, Devils Lake, Dickinson, Ellendale, Fargo, Grafton, Grand Forks, Jamestown, Minot, Rugby, Valley City, Wahpeton, and Williston. These branch offices receive no financial support from state government but generate their revenue by charging a service fee ranging from \$2 to \$6 for each customer transaction.

The committee reviewed motor vehicle registration services in other states. The committee learned in Minnesota, motor vehicle services are provided through 172 deputy registrar offices located in 35 city government offices, 63 county government offices, 61 corporate offices, and 13 offices run by individuals. These offices

charge a service fee of \$3.50 per transaction. In Montana motor vehicle registration services are provided in 56 county government offices, and in South Dakota motor vehicle registration services are provided in 64 county government offices.

The committee heard testimony regarding the benefits and concerns of county treasurers administering motor vehicle registration programs from representatives of the counties, the Department of Transportation, and other organizations. Benefits identified include:

1. Residents in rural areas of the state will have improved access to motor vehicle registration services.
2. The pilot project will serve as a model for how state government services can be successfully administered by county employees.

Concerns identified include:

1. The Department of Transportation has not received requests to expand the number of branch motor vehicle locations, except from cities concerned about enhancing local economic development or keeping jobs in the local courthouse.
2. The department does not anticipate adding to its branch system but rather would like to expand the use of technology for motor vehicle registration by using the Internet or telephone renewals.

The committee reviewed the estimated cost of establishing each of the pilot projects. The committee learned, based on the estimates made by the counties and the Department of Transportation, startup costs of each pilot site would range from between \$5,500 to \$30,000. The committee learned the counties of McKenzie, Bowman, and Emmons were interested in becoming pilot sites and that the counties involved in the pilot projects would pay the startup costs.

Other Committee Considerations

The committee received information on other states that have implemented a telecommuting program including Minnesota, Arizona, Colorado, California, and the province of Saskatchewan. The committee learned these states' and province's programs are designed to encourage employees to telecommute. Benefits of the telecommuting programs include reduced traffic congestion, reduced need for central office space, an expanded employee recruiting base, and improved employee productivity and morale. As part of its study, the committee conducted tours of the Job Service North Dakota state office building and the Workers Compensation Bureau building.

The committee reviewed statistics on the state employee suggestion incentive program (North Dakota Century Code (NDCC) Section 54-06-24). The program provides a one-time incentive payment to a state employee who submits a recommendation or proposal to reduce expenditures that is approved and implemented.

An employee is entitled to receive a one-time payment of 20 percent of any annual savings realized up to a maximum of \$2,000 for the first 12 months of implementation. Since the inception of the program in 1995, a total of \$7,808 has been paid as incentives to state employees. The estimated annual savings as a result of implementing the cost-reduction measures is \$142,000.

Recommendations

The committee recommends House Bill No. 1035 to establish a state employee telecommuting incentive program. The bill allows a state agency head to submit a proposal to the Suggestion Incentive Committee, established under NDCC Section 54-06-24 to locate a current state employee or a new employee away from a central office setting. If approved by the Suggestion Incentive Committee and implemented by the state agency, the state agency head will prepare a report after a 12-month period, comparing the actual costs relating to the telecommuting program for the period to the estimated cost if the program would not have been implemented. Based on the cost-savings report approved by the Suggestion Incentive Committee, the state agency head will be entitled to receive 10 percent of any savings identified in the report up to a maximum of \$2,000, the state employee located away from a central office setting will be entitled to receive 20 percent of any savings up to a maximum of \$2,000, and the state agency may utilize 20 percent of the savings for one-time technology or equipment purchases or capital improvements.

The committee recommends Senate Bill No. 2026 to require information technology plans prepared by state agencies to address the feasibility of telecommuting by selected employees, including positions that are suitable for telecommuting, travel and space needs, and information technology needs for supporting telecommuting.

The committee recommends Senate Bill No. 2027 to provide for a motor vehicle branch office pilot project. The bill provides that the Department of Transportation establish a pilot project office at three sites within three counties to administer motor vehicle registration programs similar to other branch offices of the department by July 1, 2001. The pilot project branch offices are in addition to other branch offices and will be operated by the treasurer in the county where the pilot project office is located. The pilot project is effective through June 30, 2005. The bill provides for the Legislative Council to consider monitoring and evaluating the efficiency and effectiveness of the project during the 2001-02 interim.

PRIVATIZATION STUDY

Section 2 of Senate Bill No. 2411 directed the Legislative Council to study privatizing and contracting for services provided by state agencies.

Privatization - Definition and Methods

Although there are many definitions of privatization, generally privatization is the involvement of the private sector in providing services or facilities usually provided by the public sector. The committee reviewed a report on privatization in the states. The committee learned the major privatization methods include:

1. Contracting with the private sector to provide services.
2. Operating public facilities by the private sector.
3. Selling certain government assets to the private sector.

Other methods of privatization include grants and subsidies, leases, public and private partnerships, and vouchers.

The committee learned agencies most involved in privatization are transportation, administration and general services, corrections, higher education, and social services-related agencies. Agencies less involved in privatization are education, labor, public safety, and treasury-related agencies.

Privatization Activities

The committee reviewed privatization activities of state agencies for the 1999-2001 biennium. The committee learned for the 1999-2001 biennium, state agencies estimate contracting for \$1.4 billion of privatized services, \$218 million of which is from the general fund. The \$1.4 billion is 29 percent of the total statewide appropriations for the 1999-2001 biennium of \$4.8 billion. Major privatization contracts include:

Agency/Service	General Fund	Total Funds
Retirement and Investment Office Investment management services		\$23,200,000
Public Employees Retirement System Health insurance plan		\$160,800,000
State Department of Health Women, infants, and children food costs		\$18,226,930
Department of Human Services Aging community-based services	\$9,479,212	\$21,495,103
Child care services	\$3,675,262	\$16,579,896
Child welfare services	\$16,898,424	\$72,180,303
Foster care eligibility determination	\$542,921	\$10,740,449
Medicaid services (excluding nursing homes services)	\$70,474,142	\$261,920,967
Nursing home services	\$75,067,679	\$252,358,444
Vocational rehabilitation services	\$2,705,326	\$10,280,731
Department of Transportation Construction activities		\$365,000,000
Roadway surface repair		\$15,250,000

Potential Services to Privatize

The committee reviewed information provided by state agencies regarding potential services agencies could privatize. The committee learned many program services provided by state agencies could be privatized; however, the costs of the services, if privatized, are

estimated by the agencies to be more than if the services are provided by state employees.

The committee reviewed proposed statutory changes identified by agencies which would enable them to privatize or more easily privatize services. The Tax Department identified NDCC Sections 57-01-13, 57-38-34, and 57-01-03 which, if changed, would allow the department to contract for tax collections from North Dakota residents, allow tax forms to be mailed to an address other than the Tax Commissioner in Bismarck, and allow general authority to contract for performing its statutory duties. The Office of Administrative Hearings identified Sections 54-57-01 and 54-57-02 which, if changed, would allow the director to hire contract administrative law judges on more than an as-needed basis. The North Dakota University System identified Section 15-10-17(15), which could be expanded to identify specific services for the University System to privatize.

Privatization Policies

The committee reviewed state policies regarding privatization and the state's liability for acts of its agents. Regarding privatization policies, the committee learned that NDCC Chapter 54-44.4 provides for state purchasing practices. The chapter provides policies that executive branch agencies must follow when purchasing materials, furniture, fixtures, printing, insurance, and other commodities. The chapter, however, specifically excludes professional services and services for the maintenance and servicing of equipment. While the Legislative Assembly has not provided general policies or guidelines for agencies to comply with when contracting for services, the following statutory provisions have been enacted by the Legislative Assembly which provide specific guidance relating to the purchase of certain services:

1. North Dakota Century Code Section 54-59-05(4) requires each executive branch agency to submit to the Information Technology Department a written request for the lease, purchase, or other contractual acquisition of information technology.
2. North Dakota Century Code Section 44-08-01 requires a state entity authorized to accept bids to give preference to resident North Dakota bidders when accepting bids for the provision of professional services, including research and consulting services.
3. North Dakota Century Code Section 46-02-09 provides that, except for certain printing projects of the legislative branch, reports prepared and submitted to the Governor and the Secretary of State, and agency biennial reports, all other printing projects exceeding \$750, not done by Central Services, must be let by competitive bidding or by solicitation of at least two quotes.

4. North Dakota Century Code Section 54-44.4-07 encourages agencies to specify the use of soybean-based ink when purchasing newsprint printing services.
5. North Dakota Century Code Section 54-46.1-01 allows the state records administrator and the Office of Management and Budget to contract for microfilming services if it is determined that the services can be provided more efficiently and economically through a contract with a private company.

The committee learned some larger agencies, including the Department of Transportation and the Department of Human Services, have instituted internal policies that these agencies use when contracting for services.

Regarding the state's liability for actions of contractors, the committee learned the liability of the state depends on whether the private company hired by the state to perform a service is an agent, servant, employee, or independent contractor. The state would generally not be liable if the company is considered by the court to be an independent contractor. Although there are various tests that would be used by a court to determine the state's employment relationship with the private company in a particular situation, the common thread running through the tests appears to be whether an employer has the right to control the means and manner of an employee's work performance.

Contracts for Services - Performance Audit

The committee received a performance audit by the State Auditor's office relating to contracts for services. The committee learned although the audit identified over 2,200 contracts for services with payments exceeding \$272 million in fiscal years 1997, 1998, and 1999, the state has very few regulations, rules, or guidelines for agencies to follow when contracting for services. The audit contained the following recommendations:

1. The Office of Management and Budget develop policies relating to the procurement of services and ensure proper training for state agency employees.
2. The State Board of Higher Education develop policies relating to the procurement of services and ensure proper training for its employees.
3. The Office of Management and Budget introduce the necessary legislation to the 2001 Legislative Assembly to allow the office to:
 - a. Establish policies on the procurement of services that are required to be followed by all state agencies.
 - b. When beneficial for the state, establish term or master contracts for services to be utilized by all state entities, including colleges and universities.

4. The Office of Management and Budget and the Attorney General's office establish one manual for contract drafting and review, and the Attorney General's office ensure that all assistant attorneys general are provided training to ensure consistent interpretation and practices throughout government.
5. The Office of Management and Budget, with the assistance of the Attorney General's office, establish an on-line contract system accessible by all the state agencies which would allow template contracts to be utilized as well as template or boilerplate language for contracts.
6. The Office of Management and Budget develop policies relating to contract monitoring and management and ensure proper training is provided for state agency employees.
7. The State Board of Higher Education develop policies relating to contract monitoring and management and ensure proper training is provided for its employees.
8. If authorized by the Legislative Assembly, the Office of Management and Budget and the North Dakota University System determine if joint and cooperative purchase of service agreements would be beneficial for the state, and if beneficial, that the Office of Management and Budget and the University System make joint or cooperative purchases of services.

The committee learned the Office of Management and Budget intends to prepare a bill for introduction to the 2001 Legislative Assembly that will expand statutory provisions that authorized it to establish purchasing policies to also include services. The bill will provide the Office of Management and Budget broad authority that will allow the office to develop rules providing flexibility for agencies when contracting for services. These rules will guide the process a state agency will utilize when contracting with a provider for services. The rules will not address an agency's decision of whether or not to contract for a particular service. As a result of the additional responsibilities that will be placed on the Office of Management and Budget, the committee learned additional staff and related funding may be necessary to provide for these additional services.

The committee learned the North Dakota University System intends to address the recommendations included in the audit report by considering:

1. Establishing dollar levels for bidding purposes when contracting for services.
2. Expanding the authority of the campuses to decide whether or not to contract for a particular service.
3. Allowing campuses to negotiate terms of contracts totaling less than \$100,000 and requiring a request for proposal for contracts for services of \$100,000 or more.

4. Allowing campuses to enter into contracts that extend beyond one year but requiring a review and evaluation of the contracts every three years.
5. Requiring all payments for services are made in conformance with written contracts.
6. Working with the Office of Management and Budget on joint purchase options.

Suggestions for Improving Privatization Activities

The committee heard testimony from representatives of the Department of Corrections and Rehabilitation, the Department of Transportation, and the Department of Human Services regarding suggestions for criteria or guidelines to be used when contracting for services. Suggestions made include:

1. Guidelines utilized for the procurement of goods may also be applicable for contracting for services.
2. A request for proposal for services should be required for services over a certain dollar amount.
3. Contracts should be very specific relating to the services to be provided and to any standards that must be met.
4. Background checks and proof of licensing should be required for entities being considered for contracted services.
5. Agency flexibility is necessary because of the variety of contracts entered into by the state.
6. Agencies should be allowed to continue to contract without rebidding if the private contractor is meeting quality standards.
7. Program monitoring or auditing of major contracts is necessary to assure that the service is being provided according to contract.
8. A state agency should not be required to accept the low bid in all instances.
9. Guidelines should be available for seeking and evaluating bids and for reviewing potential contracts for services prior to the development of the contracts.

The committee heard other testimony from representatives of public employee associations and nonprofit and other organizations regarding the study and suggestions for improving North Dakota's privatization activities. Major items included in the testimony were that the state should:

1. Require oversight of private contractors.
2. Develop consistent standards for evaluating proposals to privatize a service.
3. Require an accurate comparison between the public and private costs of providing a service.
4. Limit contracting to those services that cannot meet cost or quality benchmarks of state employees.

5. Utilize technology that would enable organizations to request funding on-line to reduce payment delays.
6. Develop a method to provide for consistent rules interpretations by state agencies.
7. Eliminate redundant form requirements by allowing organizations to complete forms only once which may be shared by all state agencies.
8. Allow an administrative allowance of at least 10 percent of the total contract to pay for indirect costs associated with providing services of the private organization.

Conclusion

The committee does not make any recommendation regarding its privatization study.

INDUSTRIAL COMMISSION STUDY

Senate Concurrent Resolution No. 4030 directed the Legislative Council to study:

1. The management responsibilities of the Industrial Commission.
2. The mission and location of each entity within and under the direction of the Industrial Commission.
3. The membership of the Industrial Commission.
4. The voting structure of the Industrial Commission.

Industrial Commission Entities, Missions, and Locations

The table below identifies the entities of the Industrial Commission and each entity's mission, related North Dakota Century Code reference, and location.

Entity	Mission	NDCC Citation	Location
Bank of North Dakota	To encourage and promote agriculture, commerce, and industry in North Dakota	Section 6-09-01	Bismarck
Mill and Elevator	To encourage and promote agriculture, commerce, and industry in North Dakota	Section 54-18-02	Grand Forks
Municipal Bond Bank	To foster and promote the provision of adequate capital markets and facilities for borrowing money by political subdivisions and for financing of their respective public improvements and to encourage political subdivisions to continue their independent undertakings of public improvements in the financing thereof by making funds available at reduced interest costs	Section 6-09.4-02	Bismarck
Housing Finance Agency	To make North Dakota's housing more affordable by providing financing, management, information, and other appropriate assistance	Chapter 54-17	Bismarck and Fargo
Oil and Gas Division	Effectively accomplish the statutory responsibility for the regulation of drilling, geophysical exploration, development, and production of oil and gas in a manner that will be most beneficial to the producer, royalty owner, and the citizens of the state	Section 38-08-04	Bismarck, Minot, Williston, and Dickinson
Geological Survey	To investigate and report the geology of North Dakota emphasizing the state's energy resources based on applied research leading to economic benefits for quality of life improvements for residents of the state; to provide public service, and to collect, create, and disseminate geologic and map-related information; and to administer regulatory programs and act in an advisory capacity to other state and federal agencies	Chapter 54-17.4	Bismarck and Grand Forks
North Dakota Building Authority	To promote the general welfare of the citizens of this state by providing projects for use by the state in providing public services by altering, repairing, maintaining, or constructing buildings primarily for use by the state and making any improvements connected to those buildings or pertaining to those buildings and necessary to the use of those buildings in providing services to the public	Section 54-17.2-04	Bismarck
Lignite research, development, and marketing program	To provide for financing of research, development, and marketing of the state's lignite resources as well as to assist in the financing of studies that will allow for the preservation of the lignite industry	Section 57-61-01.5	Bismarck
Student loan trust	To acquire and hold in one or more trusts all unpaid United States government guaranteed or reinsured student loans and North Dakota guaranteed student loans, belonging to the state of North Dakota or to any of its agencies	Section 54-17-24	Bismarck

Management Responsibilities

North Dakota Century Code Chapter 54-17 provides the statutory references relating to the Industrial Commission. Major provisions relating to the commission's management responsibilities authorize the

Industrial Commission to determine the location of all utilities, industries, enterprises, and business projects established, owned, undertaken, administered, or operated by the state and to make the rules, regulations, orders, and bylaws for the management and operation,

and for the transaction of business of those utilities, industries, enterprises, and business projects. In the management and operation of its industries, the Industrial Commission is required to:

1. Acquire by purchase, lease, or by the exercise of the right of eminent domain, all necessary property or property rights, and hold and possess or sell those rights.
2. Construct and reconstruct necessary buildings on the properties.
3. Equip, maintain, repair, and alter any and all properties acquired and the improvements.
4. Use the properties acquired and the improvements made to promote the enterprise.

The committee learned the Industrial Commission has chosen to appoint agency directors and staff to oversee the day-to-day management and operations of the entities under the commission's control. The commission's primary role is to set overall policy; approve bond issues, appoint qualified personnel, approve grants, loans, and orders; and adopt rules for the operations of these entities. To assist the Industrial Commission in its management of these entities, the Legislative Assembly or the commission has established the following advisory boards:

1. Bank of North Dakota - A seven-person bank advisory board appointed by the Governor consisting of a minimum of three bank officers representing banks from across the state.
2. Housing Finance Agency - A six-member advisory board appointed by the Industrial Commission consisting of representatives of banks, manufactured housing, realtors, builders, and homeowners.
3. Municipal Bond Bank - A three-member advisory board appointed by the Industrial Commission, one representing rural communities, one representing cities, and one representing the financial industry.
4. Mill and Elevator - Advisory committees appointed at various times by the Industrial Commission or the general manager of the mill to assist in the review or development of a project.
5. Lignite research, development, and marketing program - By executive order, the Lignite Research Council, made up of individuals appointed by the Governor, consists of representatives from the private and public sectors.

Membership and Voting Structure

Members of the Industrial Commission include the Governor, Attorney General, and the Agriculture Commissioner. Statutory references in NDCC Chapter 54-17 relating to the membership and voting structure of the commission include:

1. The Governor is the chairman of the commission and its attorney is the Attorney General.
2. All orders, rules, regulations, bylaws, and written contracts adopted or authorized by the commission, before becoming effective, must be approved by a majority of the commission.

The committee reviewed the history of the Industrial Commission relating to its voting structure. The committee learned the commission was created in 1919. From 1919 to 1933, decisions of the commission required a majority of the commission voting in favor of the action. Meetings could occur without the Governor; however, any action at any meeting had to be ratified by the Governor. From 1933 to 1973, the Governor had veto power over any action of the Industrial Commission. The Governor and one other member were necessary for a quorum.

From 1973 to the present, decisions of the commission require a majority of the commission voting in favor of the action. The Governor and one other member are necessary for a quorum.

Entity Summaries

The committee received the following information on each of the entities of the Industrial Commission by representatives of the entity and, where appropriate, a representative of the entity's advisory board:

Bank of North Dakota

The committee learned the Bank of North Dakota was founded in 1919 when the perception of the North Dakota Legislative Assembly was that both the access to financing and the grain trade were controlled in Minneapolis. The Legislative Assembly created both the Bank and the Mill and Elevator to assist North Dakotans to take control of their economic destiny. The major objectives of the Bank include:

1. To finance the expansion and diversification of the state's economy and its job base. The Bank complements and supports the work of private financial institutions through the Bank's lending programs. The Bank has over \$1 billion in loans outstanding and makes loans in four primary areas--business and industrial, farm, home, and student.
2. To maintain capital strength and financial integrity. As the Bank provides capital to help build and diversify North Dakota's economic base, the Bank needs to maintain its financial strength and integrity. The Bank's target capital asset ratio is 10 percent, which is above the state regulatory target of at least seven percent. In October 1999 the Bank's capital asset ratio was 8.75 percent, the Bank's capital totaled \$140 million, and it had total assets of \$1.6 billion.

3. To generate a consistent financial return to the state. Since 1993 the Bank's earnings have increased from approximately \$17 million per year to almost \$30 million per year.
4. To deliver first-class customer service. The Bank's four major operating divisions are:
 - a. Lending - Provides a variety of loan programs such as farm loans, business and industrial loans, home loans, and special programs such as partnership in assisting community expansion fund (PACE) and Ag PACE to stimulate economic development activity throughout the state.
 - b. Retail and operations - Provides services to banks such as check-clearing services.
 - c. Investment and trust division - Provides investment services to banks throughout the state as well as to the state of North Dakota.
 - d. Student loans - Provides student loans directly and serves as the guarantee agency for North Dakota banks that provide student loans.

Mill and Elevator

After being established in 1919, the mill began operations in 1922 as a value-added market for wheat produced in North Dakota. Mill facilities include five milling units, a terminal elevator, and a packing warehouse to prepare bagged products for shipment. The committee learned the mill is involved in a major improvement and modernization project during the 1999-2001 biennium. Once complete, the mill will be able to produce and ship 26,000 CWT. of mill products daily, an increase of 4,000 CWT. over the current 22,000 CWT. level. The mill will be capable of cleaning, processing, and milling 59,000 bushels of durum wheat each day compared to the current level of 50,000 bushels. Annually, the mill will be able to add value to 18 million bushels of spring and durum wheat compared to the current level of 15 million bushels.

Municipal Bond Bank

The Municipal Bond Bank provides low-cost loans to North Dakota political subdivisions at favorable interest rates. The loans are made with proceeds of bonds issued by the Municipal Bond Bank under the following programs:

1. Capital financing programs - Provides loans to political subdivisions for any purpose for which the political subdivision is authorized to issue municipal securities, except Municipal Industrial Development Act (MIDA) bonds.
2. State revolving fund program - Provides loans to political subdivisions for projects approved by the State Department of Health under appropriate state law and the federal Clean Water Act and Safe Drinking Water Act.

Each loan application is subject to initial credit review by the Municipal Bond Bank and to a separate credit review by the Bank of North Dakota. The Municipal Bond Bank's financial advisor performs a market analysis for each loan which determines whether the Municipal Bond Bank is the appropriate financing source for the loan.

Housing Finance Agency

The agency was formed as a result of an initiated measure approved in the 1980 general election. Previously, the Bank of North Dakota was the primary purchaser of federal housing administration-insured and veterans administration-guaranteed residential home loans. In the late 1970s, the Bank of North Dakota discontinued purchasing long-term real estate loans, which created a void in the state residential real estate finance market. The initiated measure directed the Industrial Commission to act as a state housing finance agency, to appoint an advisory board, and to issue housing revenue bonds to fund its loan programs. The 1981 Legislative Assembly expanded the agency's authority to include manufactured housing and multi-family loan programs, to receive federal grant funds, and to administer the housing assistance program.

The agency's most popular program, commonly referred to as the first-time home buyer program, has provided more than 20,000 home loans representing more than \$1 billion of loan principal with loans, in every county of the state. Another major activity of the agency involves the management and administration of the federal housing and urban development (HUD) rental assistance funds to privately owned affordable housing properties throughout the state. Approximately \$8 million in rental assistance is provided to 2,100 apartment units in 140 apartment projects throughout the state.

Oil and Gas Division

The oil and gas regulatory authority was placed under the Industrial Commission in 1941 utilizing the staff of the State Geologist. In 1981 the Legislative Assembly authorized a separate division of the Industrial Commission for oil and gas regulatory responsibility. Services provided by the Oil and Gas Division include:

1. Providing the geological and engineering expertise needed to create and enforce statutes, rules, regulations, and orders of the Industrial Commission pertaining to the drilling, development, and production of oil and gas, and the disposal of oil field brines and other fluid wastes.
2. Acquiring, compiling, and analyzing geological, engineering, production, and reservoir data.
3. Providing field inspection and technical oversight for horizontal drilling, geophysical exploration, and measurement.

4. Computerizing geophysical exploration, production, and well information data for electronic storage and dissemination to industry, royalty owners, governmental agencies, and the public.

Geological Survey

The 1989 Legislative Assembly transferred the North Dakota Geological Survey from the State Board of Higher Education to the Industrial Commission. The Geological Survey has a core and sample library located in Grand Forks on the University of North Dakota campus. Core and samples from wells drilled for oil and gas are housed in the core library. Other offices of the survey are located in Bismarck. Geological Survey responsibilities include:

1. Regulating oil, well core, and samples stored at the core and sample library.
2. Regulating coal exploration but not production or reclamation.
3. Issuing permits for commercial geothermal installations such as those installed at schools and other public buildings.
4. Overseeing the collection of fossil resources on public lands and subsurface mineral production.
5. Evaluating the minerals on state land for the Land Department.
6. Studying the geology of rocks that produce oil and gas.
7. Identifying and evaluating other mineral resources such as clays, cement rock, gravel, salts, and ores.
8. Investigating the geological hazards relating to landfills, lagoons, etc.
9. Conducting other geological investigations.
10. Administering geographic information systems.
11. Digitizing county soil maps.
12. Providing information about North Dakota geology.

Building Authority

The 1985 Legislative Assembly authorized the Industrial Commission to act as the North Dakota Building Authority. The executive director and secretary of the Industrial Commission and the director of the Office of Management and Budget serve as the authorized officers for the Building Authority. The Building Authority is responsible for providing financing for building projects at the lowest cost available, primarily through the sale of tax-exempt bonds. The agency authorized for the project is responsible for direct oversight of the building project and the Building Authority is responsible to meet the ongoing bond requirements for the life of the bonds.

Lignite Research, Development, and Marketing Program

The 1987 Legislative Assembly approved a two-cent per ton tax on coal for research and development, the revenue from which is deposited in the lignite research

fund. Subsequently, the Governor appointed a 24-member Lignite Research Council by executive order. The 1991 Legislative Assembly established the lignite research, development, and marketing program. The Lignite Research Council recommends funding and policies to the Industrial Commission for approval of lignite research, development, and marketing projects. A project receiving funds from the lignite research fund must be matched by industry. Since 1987, 125 projects totaling \$265 million have been approved.

Student Loan Trust

The 1971 Legislative Assembly authorized the Industrial Commission to acquire and hold all unpaid government-guaranteed or reinsured student loans and North Dakota student loans belonging to the state or any of its agencies. The creation of the student loan trust enabled the state to obtain low-cost funds, through the sale of tax-exempt bonds, and to use the proceeds for purchasing student loans made or acquired by the Bank of North Dakota. The executive director and secretary of the Industrial Commission and the president of the Bank of North Dakota serve as the authorized officers for the student loan trust. In June 2000 the trust had \$156 million in bonds payable. The bonds are not guaranteed by the state but are secured by student loans held in the trust portfolio or by the trust investments of its funds and accounts.

Other Information

The committee reviewed the audit findings and recommendations included in the most recent audit of each entity of the Industrial Commission. The following findings were included in the audit reports:

1. Industrial Commission - The agency has not submitted a biennial report to the Governor and the Secretary of State as required by NDCC Section 54-17-06.
2. Mill and Elevator - The agency does not have proper password security for its local area network to prevent unauthorized access.
3. Municipal Bond Bank - Because of the small number of employees, accounting personnel are responsible for cash receipts, cash disbursements, and maintaining the financial reporting system of the Municipal Bond Bank.

Conclusion

The committee does not make any recommendation relating to its study of the Industrial Commission.

BUDGET MONITORING

Status of the State General Fund

The committee heard reports from the Office of Management and Budget regarding the status of the state general fund. The committee learned as of August 31, 2000, the projected June 30, 2001, general

fund balance is estimated to be \$61.3 million, \$50 million more than the ending balance estimated at the close of the 1999 Legislative Assembly of \$11.3 million.

Through August 2000 general fund revenues exceeded the original legislative forecast by \$31.9 million. Major revenue variances include oil tax collections that exceeded the forecast by \$20 million and individual income tax collections which exceeded the forecast by \$9.6 million.

Oil Tax Revenues, Oil Production, and Oil Market Prices

The committee received status reports from the Legislative Council staff on oil tax revenues, oil production, and oil market prices for the 1999-2001 biennium. The committee learned for the period January through August 2000, 48 oil wells were drilled in North Dakota, 35 of which were producing wells. The market price per barrel of oil in August 2000 was \$26.42, \$14.75 more than the projected price per barrel of \$11.67. The committee learned the revised revenue forecast for the 1999-2001 biennium released by the Office of Management and Budget in August 2000 projects oil tax revenues will total \$68.8 million for the 1999-2001 biennium. As a result, pursuant to NDCC Section 57-51.1-07.2, \$6.8 million of these collections will be deposited in the permanent oil tax trust fund rather than the general fund.

Agency Compliance With Legislative Intent

The committee received a report from the Legislative Council staff on state agency compliance with legislative intent for the 1999-2001 biennium. The report is based on information gathered by the Legislative Council staff during visitations with agency administrators and fiscal personnel in early 2000. The report contains information on agency compliance with legislative intent, agency changes, budget concerns, staff changes, and other areas regarding agency operations and appropriations. In addition, the report includes a number of analyses of special funds, including the projected June 30, 2001, balance as compared to the projection made at the close of the 1999 legislative session.

Status of Appropriations of Major Agencies

Since the 1975-76 interim, a Legislative Council interim committee has been assigned the responsibility of monitoring the status of major state agency and institution appropriations. The Budget Committee on Government Services was assigned this responsibility for the 1999-2000 interim. The committee's review emphasized the expenditures of major state agencies, including the institutions of higher education and the charitable and penal institutions, the foundation aid program, and major program appropriations of the Department of Human Services.

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

1. Actual expenditures for the Department of Human Services through July 2000 for the temporary assistance for needy families (TANF) program were \$12.2 million, \$200,000 or 1.9 percent, less than estimated expenditures of \$12.4 million.
2. Actual Medicaid expenditures through July 2000, excluding the expenditures relating to the inter-governmental transfer program, totaled \$318.7 million, \$8.9 million less than the original appropriation estimate of \$327.6 million. Of the \$8.9 million savings, \$2.5 million is from the general fund.
3. Total expenditures at the institutions of higher education for the first year of the 1999-2001 biennium were \$236,802,424, \$12,263,921 or five percent, less than estimated. Income for the year totaled \$83,536,071, \$2,224,537 or 2.6 percent, less than estimated.
4. Total expenditures at the charitable and penal institutions for the first year of the 1999-2001 biennium were \$73,733,692, \$4,974,214 or 6.3 percent, less than estimated. Total revenues for the period were \$27,780,984, \$214,534 or .8 percent, less than estimated.
5. The Department of Public Instruction's current estimate for unspent foundation aid funds at the close of the 1999-2001 biennium is \$1,165,423. This estimate is based on the actual number of weighted student units during the first year of the biennium which was 118,831, or 599 fewer than the original estimate of 119,430, and the original estimate of 117,718 for the second year of the biennium. Any funds remaining unspent at the end of the biennium will be distributed as follows:
 - a. The first \$1 million as supplement payments on the basis of average daily membership.
 - b. The second \$1 million to assist school districts that experienced declining enrollment.
 - c. The next \$2 million to school districts eligible to receive reorganization bonuses.
 - d. Any remaining amounts as supplemental payments on the basis of average daily membership.

DEPARTMENT OF HUMAN SERVICES FTE REPORT

Section 6 of Senate Bill No. 2012 provided that the human service centers, State Hospital, and Developmental Center report to the Budget Section and a committee of the Legislative Council on the hiring of any additional FTE positions in addition to those authorized

by the Legislative Assembly for the 1999-2001 biennium. The committee was assigned this responsibility and received reports from the Department of Human Services indicating that the department hired 18.75 FTE positions at the human service centers in addition to those authorized by the Legislative Assembly. The estimated biennial cost of these positions totals \$1.2 million, \$237,000 of which is from the general fund. The positions added include:

- Nine FTE for providing services to children with serious emotional disorders under the partnership project - One in the Badlands region, two in the Devils Lake region, one in the northwest region, two in the south central region, and three in the southeast region.
- One FTE activity therapist at the Southeast Human Service Center to provide services to clients in the infant development program.
- One FTE adult protective services/ombudsman administrator for the northwest and north central human service regions.
- One FTE aid in the North Central Human Service Center to assist in reducing the number of admissions to the State Hospital.
- A .75 FTE administrative position at the North Central Human Service Center to assist with medical records.
- One FTE administrator and .5 FTE secretary at the Northeast Human Service Center for the retired and senior volunteer program.
- One FTE at the Northeast Human Service Center for the healthy families America pilot project which provides prevention and early intervention services for at-risk children.
- One FTE counselor position at the Southeast Human Service Center to assist in reducing the number of admissions to the State Hospital.
- One FTE activity therapist at the Southeast Human Service Center for the infant development program.
- One FTE counselor position at the West Central Human Service Center to expand services of the Manchester House relating to case management and therapeutic interventions.
- A .5 FTE position at the North Central Human Service Center to administer the retired and senior volunteer program as a pilot project in the north central region.

AGREEMENTS BETWEEN NORTH DAKOTA AND SOUTH DAKOTA

North Dakota Century Code Section 54-40-01 provides that an agency, department, or institution may enter into an agreement with the state of South Dakota to form a bistate authority to jointly exercise any function the entity is authorized to perform by law. Any proposed agreement must be submitted to the Legislative

Assembly or, if the Legislative Assembly is not in session, to the Legislative Council or a committee designated by the Council for approval or rejection. The agreement may not become effective until approved by the Legislative Assembly or the Legislative Council. The Budget Committee on Government Services was assigned this responsibility for the 1999-2000 interim.

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

HOUSING DEVELOPMENT FUND REPORT

Section 5 of 1999 House Bill No. 1383 provides that the governing board overseeing a housing development fund provide to the Governor and the Legislative Council annual financial statements and a report for the first four taxable years beginning after December 31, 1998, on the housing development fund. The report is to analyze the impact of the fund on the state's economy, business and employment activity generated by loans from the fund, and the effects of that activity on state and local tax revenues. The bill allows a financial institution or group of financial institutions to establish a corporation or limited liability company to operate a housing development fund. The fund may be used for making loans for any housing project in the state, but the primary focus for loans from the fund must be to provide funding for multi-family housing projects in rural areas that are experiencing or expecting a shortage of housing as a result of economic development. The bill allows a credit against a financial institution's taxes equal to the difference between the participating financial institution's share of interest earned on the loan from the fund and the amount the institution would have earned by applying an interest rate of 300 basis points more than the comparable treasury security rate. The bill is effective for four taxable years beginning after December 31, 1998. The housing development fund program allows a higher percentage of the cost of a housing construction project in rural North Dakota to be financed than would be available through traditional financing programs. Traditional financing programs will generally provide financing based on the appraised value of the housing unit. Because in rural North Dakota the cost of new housing construction generally exceeds the housing's appraised value, it is difficult to obtain an adequate amount of financing for new construction in these areas. This program provides the financing for the cost of construction which exceeds the appraised value and is intended to make housing construction projects more feasible in rural areas of the state. During the interim, no housing development funds were established, and therefore, no reports were provided to the committee.

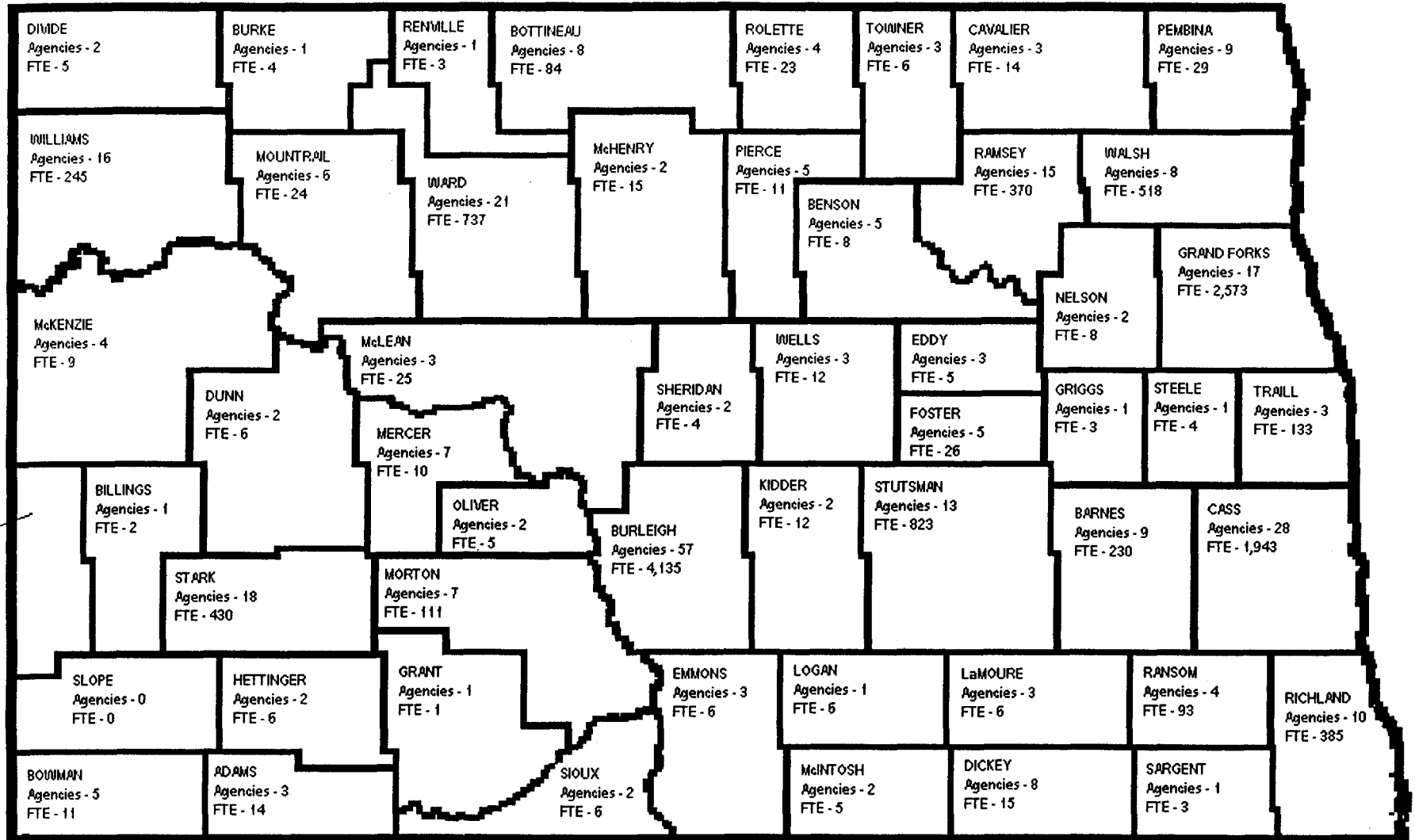
BUDGET TOURS

During the interim, the Budget Committee on Government Services functioned as a budget tour group of the

Budget Section and visited the State Penitentiary, Missouri River Correctional Center, Youth Correctional Center, Roughrider Industries, Williston State College, Northwest Human Service Center, Williston Research Extension Center, Dickinson Research Extension Center, Dickinson State University, and the Badlands Human Service Center. The committee heard about

facility programs, institutional needs for major improvements, and problems institutions or other facilities may be encountering during the interim. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 2001 legislative session.

NORTH DAKOTA STATE GOVERNMENT AGENCY AND FTE POSITION LOCATIONS 1999-2001 BIENNIUM



BUDGET COMMITTEE ON HEALTH CARE

The Budget Committee on Health Care was assigned the following four study responsibilities:

1. Section 9 of House Bill No. 1004 directed a study of the State Department of Health plan for a community health grant program.
2. House Concurrent Resolution No. 3046 directed a study of the various challenges facing the delivery of health care in this state, including changes in hospital reimbursements, technological innovations, and the regionalization of services.
3. House Concurrent Resolution No. 3070 directed a study of health care access, quality, and cost to determine essential health care services, critical providers, and access sites, and to identify geographic, demographic, and economic issues relating to health care. This resolution also directed the State Health Council to conduct public hearings on health care issues and report its findings to this committee.
4. Senate Concurrent Resolution No. 4004 directed a study of the possibility of creating an incentive package to assist rural communities and nursing facilities in closing, significantly reducing bed capacity, or providing alternative long-term care services.

The committee was also assigned the responsibility to receive reports from:

- The Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program. (North Dakota Century Code (NDCC) Section 50-29-02)
- The Department of Human Services and the State Board of Nursing regarding progress in preparing a joint recommendation relating to nurse licensure exemptions for the administration of medication. (Section 3 of 1999 House Bill No. 1403)

Committee members were Representatives Clara Sue Price (Chairman), Byron Clark, Audrey Cleary, William R. Devlin, David Drovdal, Serenus Hoffner, Keith A. Kempenich, Deb Lundgren, Carol A. Niemeier, Todd Porter, Wanda Rose, Dale C. Severson, and Ken Svedjan and Senators Judy L. DeMers, Tom Fischer, Ralph Kilzer, Marv Mutzenberger, Randy A. Schobinger, and Russell T. Thane.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

COMMUNITY HEALTH GRANT PROGRAM

Section 9 of 1999 House Bill No. 1004 directed the State Department of Health to develop a comprehensive plan for a community health grant program and to submit

the plan to the Legislative Council during the 1999-2000 interim. The community health grant program is to use moneys available in the community health trust fund, established to receive 10 percent of the tobacco settlement payments. The Legislative Council was directed to study the plan and report its findings and recommendations to the 2001 Legislative Assembly. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

Background

As a result of a multistate settlement agreement negotiated between various states' attorneys general and tobacco manufacturers, North Dakota will receive annual distributions of tobacco settlement proceeds. During the 1999-2001 biennium, North Dakota's tobacco settlement distributions are anticipated to be approximately \$52.2 million. North Dakota may receive as much as \$775 million over the next 25 years from the settlement.

The 1999 Legislative Assembly established a plan for the use of these moneys through the passage of House Bill No. 1475 (NDCC Section 54-27-25). Section 54-27-25 establishes a tobacco settlement trust fund into which must be deposited all moneys received by the state pursuant to Sections IX (payments) and XI (calculation and disbursement of payments) of the master settlement agreement. All moneys deposited in the fund and all interest earned on those moneys must be transferred within 30 days as follows:

- Ten percent to a community health trust fund to be administered by the State Department of Health. The State Department of Health may use moneys in the fund, as appropriated by the Legislative Assembly, for community-based and other public health programs, including those with an emphasis on preventing or reducing tobacco usage. The interest earned on moneys in the community health trust fund is deposited in the general fund.
- Forty-five percent to the common schools trust fund to become a part of the principal of that fund. The interest earned on moneys in the common schools trust fund is used for distributions to schools or added to the fund's principal, at the discretion of the Board of University and School Lands.
- Forty-five percent to the water development trust fund to be used to address the long-term water development and management needs of the state. The interest earned on moneys in the water development trust fund is deposited in the general fund.

Tobacco Settlement Trust Fund and Community Health Trust Fund Analysis

The committee reviewed estimated revenues and expenditures for the tobacco settlement trust fund for the 1999-2001 biennium:

Tobacco Settlement Trust Fund	1999-2001 Biennium	
Beginning balance		\$0
Add estimated revenues		
Tobacco settlement revenues	52,183,788	
Total available		\$52,183,788
Less estimated expenditures and transfers		
Transfers to the community health trust fund (10 percent)	\$5,218,378	
Transfers to the common schools trust fund (45 percent)	23,482,705	
Transfers to the water development trust fund (45 percent)	23,482,705	
Total estimated expenditures and transfers		\$52,183,788
Estimated ending balance		\$0

The committee reviewed estimated revenues and expenditures for the community health trust fund for the 1999-2001 biennium:

Community Health Trust Fund	1999-2001 Biennium
Beginning balance	\$0
Add estimated revenues	
Transfers from the tobacco settlement trust fund	5,218,378
Total available	\$5,218,378
Less estimated expenditures	
No appropriations were made to the State Department of Health for the 1999-2001 biennium	\$0
Estimated ending balance	\$5,218,378

Centers for Disease Control and Prevention Recommendations

The committee learned the United States Centers for Disease Control and Prevention (CDC) has established "best practices" guidelines to help states plan and carry out effective tobacco use prevention and control programs. The CDC also established recommended funding ranges to guide states in the development of these programs. The funding ranges are shown below for each of the nine "best practices." Each funding range is calculated based on a formula established by the CDC using a combination of minimum or base funding and per capita funding based on the state's population. For North Dakota, the proposed funding ranges for all components total \$12.73 to \$25.82 per capita, or approximately \$8.2 to \$16.5 million, per year. The CDC "best practices" address the following nine components of comprehensive tobacco use prevention and control programs:

Program	Range of Estimated Annual Cost
Community programs to reduce tobacco use	\$1,299,000 - \$2,482,000
Chronic disease prevention and early detection programs to reduce the burden of tobacco-related diseases	\$2,787,000 - \$4,162,000
School tobacco use prevention and cessation programs	\$999,000 - \$1,498,000
Enforcement of tobacco control policies	\$426,000 - \$817,000
Statewide tobacco use prevention and cessation projects to provide technical assistance to local programs, promote media advocacy, implement smoke-free policies, and reduce minors' access to tobacco products	\$257,000 - \$641,000
Counter-marketing programs	\$641,000 - \$1,923,000
Statewide tobacco cessation assistance programs	\$687,000 - \$2,865,000
Surveillance and evaluation system to monitor the performance of tobacco control programs	\$710,000 - \$1,439,000
Administration and management system to facilitate the coordination of program components, the involvement of multiple state agencies and levels of local government, and the involvement of statewide voluntary health organizations and community groups	\$355,000 - \$720,000
Total	\$8,161,000 - \$16,547,000

The committee received testimony from representatives of the Red River Health Promotion Council, Fargo; MeritCare Health System, Fargo; the Center for Tobacco Cessation, Fargo; the American Heart Association; and the American Cancer Society in support of the implementation of all or a portion of the CDC "best practices." The committee also received testimony from representatives of the Central Valley Health Board, Jamestown; MeritCare Health System; and the American Heart Association supporting the use of the entire 10 percent allocation from the tobacco settlement trust fund for tobacco control programs.

State Department of Health Plan and Responses

A representative of the State Department of Health identified alternative uses for moneys in the community health trust fund, including:

1. Implementing the recommendations of the CDC relating to the establishment of a comprehensive statewide tobacco use prevention and control program.
2. Increasing state aid to local public health units.
3. Developing a comprehensive community or school health grant program.
4. Funding a preventive medicine center of excellence at the University of North Dakota School of Medicine and Health Sciences.

5. Enhancing emergency medical services.
6. Increasing state funding for immunization programs.
7. Providing additional epidemiological support to local public health units.
8. Providing funding for the employment of four additional environmental health practitioners to support local public health units.
9. Providing funding for the Family Health Care Center in Fargo.
10. Developing a statewide public health data management system.
11. Providing a contingency fund for public health emergencies.
12. Developing elderly health programs.

The State Department of Health subsequently submitted a two-part plan for a community health grant program—one for the use of moneys accumulating in the community health trust fund during the 1999-2001 biennium and one for the use of moneys to be deposited in the fund during the 2001-03 and future bienniums.

Regarding the use of moneys accumulating in the community health trust fund during the 1999-2001 biennium, the State Department of Health plan provides that the estimated balance of \$5.2 million be used to:

1. Maintain a balance in the community health trust fund to provide cash flow for grants, which may be necessary based on the anticipated timing of transfers to be received from the tobacco settlement trust fund.
2. Provide a contingent appropriation of \$1 million per biennium for public health emergencies.

Regarding the use of moneys to be deposited in the community health trust fund during the 2001-03 and future bienniums, the State Department of Health plan provides that the estimated \$5 million per biennium be used for:

1. A **Healthy Schools grant program** funded at \$2 million per biennium, or approximately \$9 per student per year. The State Department of Health would authorize a grant only after a local board of health and a local school board sign a memorandum of agreement concerning preventive health programs to be funded. The proposed grant program may require matching funds of \$1 of local funds for every \$2 or \$4 of grant funds.
2. A **Healthy Families grant program** funded at \$2 million per biennium, or approximately \$1.50 per state resident per year. The State Department of Health would authorize a grant only after the local boards of health and all interested parties in a community health region develop a plan that identifies the priority needs of the region, the programs to be funded, and the method of evaluating the programs. The

proposed program may require matching funds of \$1 of local funds for every \$4 of grant funds.

3. A **Healthy Communities grant program** funded at \$1 million per biennium. The healthy communities grant program could be used to:
 - a. Increase state aid to local health districts from \$3,000 to \$7,000 per county per year, excluding per capita payments.
 - b. Provide a \$25,000 per year grant to each health region to augment federal funding provided by the CDC for local tobacco program specialists and to plan, implement, and evaluate regional programs.
 - c. Provide \$88,000 per year for statewide training, improvement of data management programs, and evaluation of the community health grant program.

The committee received testimony from representatives of the North Dakota Association of Elementary School Principals and North Dakota School Nurses supporting increased funding for school nurse programs. The committee received testimony from a representative of the Fargo Cass Board of Health indicating support for the State Department of Health plan for the use of moneys in the community health trust fund. Testimony received from a representative of the First District Health Unit, Minot, supported the use of a portion of the moneys in the community health trust fund for public health emergencies.

Recommendations

The committee recommends Senate Bill No. 2028 to provide that the interest earned on moneys deposited in the community health trust fund remains in that fund. Currently the interest is deposited in the general fund. An average balance of \$5.2 million, the estimated July 1, 2001, balance in the community health trust fund, will generate interest income of approximately \$510,000 per biennium, assuming a rate of return of 4.9 percent per year. Actual interest earnings depend on the fund balance and the timing of collections and distributions from the fund.

The committee recommends Senate Bill No. 2029 to provide that the interest earned on moneys deposited in the water development trust fund be transferred to the community health trust fund. Currently the interest is deposited in the general fund. An average balance of \$23.5 million, the estimated July 1, 2001, balance in the water development trust fund, will generate interest income of approximately \$2.3 million per biennium, assuming a rate of return of 4.9 percent per year. Actual interest earnings depend on the fund balance and the timing of collections and distributions from the fund.

The committee also recommends the 57th Legislative Assembly:

- Support the State Department of Health plan for the establishment of Healthy Schools, Healthy

Families, and Healthy Communities grant programs with moneys to be deposited in the community health trust fund during the 2001-03 and future bienniums.

- Use a portion of the moneys accumulating in the community health trust fund during the 1999-2001 biennium for:

Statewide tobacco counter-marketing programs.

Training and educational program materials for schools and communities to assist in the establishment and operation of tobacco use prevention and cessation education programs.

HEALTH CARE DELIVERY, ACCESS, QUALITY, AND COST

House Concurrent Resolution No. 3046 directed the Legislative Council to study the various challenges facing the delivery of health care in this state, including changes in hospital reimbursements, technological innovations, and the regionalization of services. House Concurrent Resolution No. 3070 directed the Legislative Council to study health care access, quality, and cost to determine essential health care services, critical providers, and access sites and to identify geographic, demographic, and economic issues relating to health care. House Concurrent Resolution No. 3070 also directed the State Health Council to conduct public hearings throughout the state to elicit the public's input regarding health care needs and services and to report its findings to the appropriate Legislative Council committee. The Legislative Council assigned these responsibilities to the Budget Committee on Health Care. The committee combined these study responsibilities.

Background

The health care industry in North Dakota is faced with challenges originating at both the state and national levels. At the national level, the Balanced Budget Act of 1997 had a far-reaching impact on various elements of the health care industry, including hospitals and home health care providers. At the state level, challenges originate from the state's changing demographics—an aging population with more sparsely populated rural areas. While some areas of the state have limited access to health care services, there is overlap and duplication in the health care delivery systems in other areas of the state. In addition, a concern exists that past and anticipated future increases in health care insurance premiums create an economic burden and make health insurance unaffordable to many of the state's citizens.

As an example of recent increases in health insurance premium rates, the following schedule shows actual increases in the monthly premiums for health insurance benefits for state employees for the 1993-95 to 1999-2001 bienniums and estimated increases for the 2001-03 biennium:

Biennium	Monthly Premium	Biennium to Biennium Percentage Change
1993-95	\$254	
1995-97	\$265	4.3%
1997-99	\$301	13.6%
1999-2001	\$350	16.3%
2001-03 (projected)	\$427	22.0%

North Dakota's population has evolved from primarily rural to primarily urban, resulting in more sparsely populated rural areas. The following table shows changes in the state's population and the percent of the population living in rural areas (which includes communities of less than 2,500 persons) and urban areas from 1950 to 1990:

Census Year	State Population	Percent Rural	Percent Urban
1950	619,636	73.4%	26.6%
1960	632,446	64.8%	35.2%
1970	617,761	55.7%	44.3%
1980	652,717	51.2%	48.8%
1990	638,800	49.4%	50.6%

From 1990 to 1999 the number of hospitals in North Dakota has decreased. However, the number of hospital beds, including swing beds, has decreased at an even higher rate, as shown on the following table:

Year	Number of Hospitals		Hospital Beds	
	Number	Percent Change	Number	Percent Change
1990	52		3,921	
1999	46	(11.5%)	3,176	(19.0%)

Provider Reimbursements

Hospitals

The committee learned the Balanced Budget Act of 1997 has resulted and will continue to result in significant reductions in Medicare revenues for North Dakota hospitals. Rural hospitals may be the most severely impacted by the funding reductions because many rural hospitals receive a large portion of their patient revenue from Medicare reimbursements.

Also of concern to North Dakota hospitals and health care consumers is the significant difference in Medicare, Medicaid, and commercial insurance payments for patients undergoing similar procedures. The following schedule shows, for 1997, the differences in Medicare, Medicaid, and commercial insurance payments received by North Dakota hospitals for treating patients receiving services in the five most common major diagnostic categories:

Major Diagnostic Category	Average Medicaid Payments	Average Medicare Payments	Average Commercial Insurance Payments
Circulatory system	\$10,390	\$6,941	\$11,127
Respiratory system	\$4,498	\$4,986	\$7,037
Pregnancy and childbirth	\$2,071	Not Applicable	\$2,238
Musculoskeletal system	\$6,243	\$6,155	\$6,876
Digestive system	\$4,253	\$5,572	\$5,500

There are significant differences between rural and urban hospitals in the amount of reimbursement received through Medicaid and Medicare, but there are also differences in the cost of providing services. The

committee considered the following information relating to the treatment of pneumonia, based on recent unaudited Medicare cost reports for various urban and rural facilities in the state:

	Treatment for Pneumonia				
	Average Cost	Average Medicaid Reimbursement	Average Medicaid Reimbursement as a Percentage of Cost	Average Medicare Reimbursement	Average Medicare Reimbursement as a Percentage of Cost
Selected urban facilities	\$4,301	\$3,402	79.1%	\$4,421	102.8%
Selected rural facilities	\$3,102	\$2,276	73.4%	\$4,030	129.9%

The committee learned the Balanced Budget Act of 1997 will also impact special purpose hospitals, such as the State Hospital. The State Hospital receives Medicaid disproportionate share funding for providing care for indigent and uninsured patients. The Department of Human Services anticipates the Balanced Budget Act of 1997 will result in a decrease in the State Hospital's Medicaid disproportionate share funding from \$1.2 million in fiscal year 1998 to approximately \$400,000 in fiscal year 2003.

The committee considered the various payment systems used to provide reimbursements to hospitals and clinics. Since fiscal year 1984, the Health Care Financing Administration has used a prospective payment system to provide federal Medicare reimbursements to hospitals. Under a prospective payment system, payments to hospitals are based on a fixed amount for each hospital admission, based on the patient's condition and treatment. The characteristics of a patient's condition and treatment are defined in a diagnostic-related group (DRG). Under a prospective payment system, hospitals that are able to provide care at average costs and maintain a sufficient volume of service will produce a profit.

Prior to 1987, Medicaid inpatient hospital services in North Dakota were reimbursed using a retrospective payment system. A retrospective payment system provides initial payments based on an estimate of the hospital's cost of providing a service. Payments are eventually adjusted to reflect the hospital's actual cost. Due to the uncertainty involved for both providers and payers, the lengthy settlement process, and the increased administrative costs associated with such a system, a prospective payment process was implemented in 1987 for inpatient Medicaid hospital services in North Dakota.

The committee learned outpatient Medicaid hospital services in North Dakota are reimbursed using a retrospective payment system. A representative of the Department of Human Services reported that due to the inefficiencies of the retrospective payment system, the department was considering developing and implementing a prospective payment system for outpatient Medicaid hospital services. The department considered two payment classification systems for use in the

prospective payment system—ambulatory patient groups and ambulatory payment classifications. Due primarily to the fact ambulatory patient groups have been in existence for 10 years and ambulatory payment classifications are new and untested, the department decided to base the new prospective payment system on ambulatory patient groups. The committee received testimony from a representative of the North Dakota Health Care Association indicating a concern that the proposed payment system would create administrative difficulties for hospitals due to the fact the Health Care Financing Administration is in the process of developing a prospective payment system for outpatient Medicare services using ambulatory payment classifications.

The committee asked the Legislative Council chairman to request that the Department of Human Services discontinue the development of a prospective payment system for outpatient Medicaid services using ambulatory patient groups, that all changes to the current payment system for outpatient Medicaid services be delayed to allow the development and testing of ambulatory payment classifications by the Health Care Financing Administration, and that the department consider using ambulatory payment classifications in the development of a prospective payment system for outpatient Medicaid services in North Dakota. The Legislative Council chairman subsequently sent a letter requesting the Department of Human Services to discontinue the development of the system using ambulatory patient groups.

Home Health Care

The committee learned that in an effort to control the rate of growth in expenditures for home health care, Congress imposed limits on Medicare payments for home health services through enactment of the Balanced Budget Act of 1997. The subsequent interim payment system resulted in a 38 percent reduction in Medicare reimbursements for home health services from 1997 to 1998. Medicare reimbursements for home health care were reduced by another 20 percent for fiscal year 1999. Nationwide, 30 percent of all home health care agencies have closed since January 1998. In North Dakota three agencies have closed.

The committee learned the Health Care Financing Administration plans to implement a new prospective payment system for Medicare home health care services. Testimony was received from representatives of the home health care industry relating to the uncertain impact of the proposed payment system.

Nurse Practitioners

The committee learned that Medicaid reimbursement for nurse practitioner services in North Dakota is accomplished through the following methods:

- Certified pediatric and family nurse practitioners can directly bill the Medicaid program for any service that is billable within the scope of their practice.
- Other nurse practitioner services can be billed as a physician service by the supervising physician through the use of a modifier that indicates the service was provided by a nurse practitioner.

The committee received testimony from a clinical nurse specialist indicating clinical nurse specialist services provided in Minnesota are directly reimbursable through the Minnesota Medicaid program, but similar services provided in North Dakota are not directly reimbursable. The committee also received testimony from a family nurse practitioner indicating the requirement that only a primary care provider can make direct referrals for Medicaid services restricts access to health care for Medicaid patients due to the limited number of primary care providers in some areas of the state. In North Dakota all Medicaid patient services must be coordinated through a primary care provider, which must be either a physician or a rural health clinic.

Critical Access Hospitals

In order to mitigate the negative effects the enactment of the Balanced Budget Act of 1997 has had on small hospitals, Congress created the Medicare rural hospital flexibility program under which limited service hospitals known as critical access hospitals are designated. Critical access hospitals may receive increased Medicare reimbursements through the use of a cost-based retrospective reimbursement system rather than a prospective payment system. The Tioga Medical Center was the first North Dakota hospital to receive the critical access designation. The committee learned a rural hospital may be designated as a critical access hospital if it:

1. Is located in a state that has a critical access hospital plan approved by the Health Care Financing Administration. (North Dakota's plan was approved in December 1998.)
2. Is operated as a public or nonprofit facility.
3. Is located at least 35 miles from another hospital or is designated as a necessary provider.
4. Offers 24-hour emergency care.

5. Provides no more than 25 beds, with no more than 15 beds used for acute care services.
6. Keeps patients no longer than 96 hours unless approved by a peer review organization.
7. Belongs to a rural health network with agreements for patient transfer and emergency services.

Access and Utilization

Access to and utilization of preventive care services are indicative of the quality of a health care system. In North Dakota, approximately 85 percent of pregnant women receive prenatal care during their first trimester as compared to a national average of 82 percent. Approximately 83 percent of the state's two-year-old children have been immunized, compared to a national average of 78 percent.

The committee learned that geographic access to health care providers is fairly good in North Dakota as over 90 percent of the state's population is within 21 miles of a hospital. Although geographic access does not appear to be a significant problem in most areas of the state, the declining rural population is a cause for concern for health care providers in some areas. In many rural areas, emergency medical service providers are finding it difficult to recruit enough volunteers to serve the aging population. Many rural clinics are suffering from similar problems in recruiting staff. Related to the issue of recruiting health care staff to serve in rural areas, the committee learned the University of North Dakota School of Medicine and Health Sciences has implemented the rural opportunities for medical education program to provide an eight-month experience in rural primary care to third-year medical students. The program allows medical students to live and train in nonmetropolitan communities.

A combination of declining population in rural areas, a population that is more mobile and therefore willing to travel to population centers to access health care, and the general trend in health care to increase the provision of outpatient services has resulted in a significant decrease in the number of inpatient hospital days recorded in the state's rural hospitals. The committee learned that from 1976 to 1997, 15 of North Dakota's rural hospitals experienced an average decrease of 71 percent in the annual number of inpatient hospital days. More recently, from 1990 to 1997, the number of Medicare inpatient days for all North Dakota hospitals decreased by 21 percent, from 280,000 to 221,000 days per year.

The committee received information on the location and services provided at each hospital in the state. There are 46 general hospitals and three specialized hospitals (one rehabilitation and two psychiatric) in the state.

Health Insurance

The committee learned a 1998 study conducted by the State Department of Health indicated the percentage of North Dakotans without health insurance declined slightly from 9.9 percent in 1993 to 8.6 percent in 1998. During the 1999-2001 biennium, the department conducted a survey of health care access by farm and ranch families. The survey indicated of the 1,571 farm and ranch households selected for the survey, six percent reported having no health insurance. One in four households reported at least one member of the household had some type of public health insurance coverage (Medicare, Medicaid, or Healthy Steps). The survey responses indicated many farm and ranch families are concerned about having to cancel their health insurance due to the high cost, and they are concerned about the inadequacy of the coverage they are able to afford.

The committee learned during the 1990s, the overall consumer price index increased approximately two percent per year, while the medical component of the consumer price index increased by approximately four percent per year. During that period, allowable charges by Blue Cross Blue Shield of North Dakota increased approximately 5.5 percent per year.

The committee learned recent increases in the amount spent by health care consumers for prescription drugs has caused concern among health care payers. Blue Cross Blue Shield of North Dakota reported during the past three years, per member per month charges for prescription drugs have increased 49 percent, due primarily to:

1. An increase in the number of prescription drugs available to consumers.
2. New drug treatment options for certain illnesses.
3. An increase in prescription drug usage by consumers.
4. Increased demand for certain drugs created by direct-to-consumer advertising by drug manufacturers, resulting in inflated prices for those drugs.

The committee learned the Department of Human Services proposed rules to require the prior authorization of Medicaid pharmaceutical services for three classes of drugs--anti-ulcers, antiarthritics, and antihistamines. The department estimated the prior authorization of these pharmaceutical services would result in savings of at least \$200,000 per year for the Medicaid program. However, due to opposition to the proposed rules, the department rescinded the rules and is considering introducing legislation to be considered by the 2001 Legislative Assembly relating to the prior authorization of Medicaid pharmaceutical services.

The committee learned the State Department of Health may be eligible to receive a grant from the United States Health Resources and Services Administration to

conduct a one-year study to identify the characteristics of the uninsured in North Dakota and to develop proposals to provide health insurance coverage to all state residents. By motion, the committee communicated its support for the department's proposed grant application.

Other Health Care Issues

Nursing Facility Survey Process

The committee learned in North Dakota, each nursing facility is surveyed or reviewed every 9 to 15 months by the State Department of Health. Although there are no fees charged to a nursing facility for the survey, the facility does incur costs for staff time occupied during the survey process.

The committee learned due to concerns regarding the nursing facility survey process, the North Dakota Long Term Care Association plans to develop a proposal to be considered by the Health Care Financing Administration to implement a pilot survey system in North Dakota. The pilot system would involve surveyors working collaboratively with nursing facilities to review care, identify problem areas, develop improvement strategies, evaluate the effectiveness of strategies, and establish expectations and timeframes for progress.

Educational Loan Repayment Programs

The committee received information on the need to expand existing educational loan repayment programs to address shortages in nurses and dentists in North Dakota. Two educational loan repayment programs are authorized in North Dakota--the educational loan repayment program for physicians (NDCC Chapter 43-17.2) and the educational loan repayment program for nurse practitioners, physician assistants, and certified nurse midwives (NDCC Chapter 43-12.2). The committee learned that in many areas of the state, it is difficult to recruit nurses to fill positions in hospitals, nursing homes, clinics, and other health care facilities. Only 288 licensed dentists are practicing in North Dakota, and most are located in the larger cities. The result is limited access to dental health services in many rural areas of the state. The committee learned from a representative of the State Department of Health that expanding the loan repayment programs to include nurses and dentists may be one way to address the shortages in those areas of the health care industry.

Emergency Medical Services

The committee learned in many areas of North Dakota, emergency medical services coverage is provided by volunteers. Although it is increasingly difficult to find volunteers in many areas, the role of emergency medical services may expand as some rural hospitals close. Federal policies relating to reimbursement for emergency medical services provide for reimbursement on a fee-for-service basis and pay only if

transportation is provided. It may be inappropriate for the provision of emergency medical services to be based on a fee-for-service reimbursement system in rural areas because the services need to be available even when not being used. A funding model similar to that used to provide fire protection and law enforcement services was suggested by the State Department of Health as a more appropriate model to be used to fund emergency medical services in rural areas.

Health Council Hearings

The committee received testimony from a representative of the State Department of Health regarding public hearings conducted by the State Health Council and public input received at those meetings. At the time of the department's presentation to the committee, the State Health Council had conducted hearings in six of the eight regional planning areas. Public comments primarily related to the need to maintain hospital services and recruit health care personnel in rural areas and the 1999 Legislative Assembly's allocation of tobacco settlement proceeds.

Long-Range Plan for Health Care

The committee received testimony from a representative of Blue Cross Blue Shield of North Dakota regarding the need to assess future health care needs and population changes to ensure continued access to health care for all North Dakotans. It was suggested to the committee the Legislative Assembly should direct the State Health Council to develop a plan for North Dakota health care in the year 2020.

Recommendation

As indicated above, the committee reviewed the Department of Human Services proposal to implement a new payment system for outpatient Medicaid services. The committee asked the Legislative Council chairman to request that the Department of Human Services discontinue the development of a prospective payment system for outpatient Medicaid services using ambulatory patient groups, that all changes to the current payment system for outpatient Medicaid services be delayed to allow the development and testing of ambulatory payment classifications by the Health Care Financing Administration, and that the department consider using ambulatory payment classifications in the development of a prospective payment system for outpatient Medicaid services in North Dakota. The chairman of the Legislative Council sent a letter to the Department of Human Services regarding the committee's request.

INCENTIVES FOR LONG-TERM CARE ALTERNATIVES

Senate Concurrent Resolution No. 4004 directed the Legislative Council to study the possibility of creating an incentive package to assist rural communities and

nursing care facilities in closing, significantly reducing bed capacity, or providing alternative long-term care services. This study was assigned to the Budget Committee on Health Care.

Background

The closure of a long-term care facility in a rural community can have a significant impact on the community similar to the loss of other local businesses, schools, or hospitals. Consequently, financial assistance may be needed when a facility closes or reduces bed capacity. Financial assistance may also be needed to enable facilities to make a transition to providing alternative long-term care services.

The size of North Dakota's existing long-term care infrastructure and the state's changing demographics must be considered when planning for the delivery of long-term care services in the future. North Dakota has 75.05 nursing facility beds per 1,000 elderly (age 65 and over) while the national average is fewer than 50 beds per 1,000. North Dakota institutionalizes approximately 10.3 percent of its elderly population, the highest percentage in the nation.

In North Dakota there are 89 nursing care facilities, providing over 7,000 nursing care beds, and 43 basic care facilities, providing over 1,400 basic care beds. The average occupancy rate for nursing care facilities is 92 percent, and the average occupancy rate for basic care facilities is less than 85 percent. Of each 100 occupied nursing care beds, approximately 55 beds are paid for through the state Medicaid program.

Task Force on Long-Term Care Planning

During the 1997-99 biennium, the Legislative Council's Budget Committee on Long-Term Care received a report from the Task Force on Long-Term Care Planning, a task force appointed by the Governor to assist in designing a cost-effective long-term care system in North Dakota. The task force report concluded the payment system used to fund long-term care lacks the incentives needed to encourage providers to deliver alternative services or to reduce licensed bed capacity. The task force continued its study during the 1999-2000 interim. Although the 1997-98 interim task force had determined that incentives should be made available to encourage long-term care facilities to reduce institutional capacity and develop alternative services, the 1999-2000 task force determined it was premature for the task force to begin a study of the development of such incentives because the Department of Human Services was considering similar issues in the implementation of the provisions of 1999 Senate Bill No. 2168 (see the following section entitled "Intergovernmental Transfer Program").

Section 3 of 1999 Senate Bill No. 2036 directed the Department of Human Services and the State Department of Health to prepare a recommendation for

consideration by the 57th Legislative Assembly describing the conversion of current basic care and assisted living facilities into an integrated long-term housing and service delivery system entitled assisted living. The Task Force on Long-Term Care Planning, which includes representatives of both agencies, addressed this issue and developed recommendations that were presented to the committee. The recommendations provided that the current definitions and regulations relating to basic care should be retained and that an integrated assisted living delivery system not be developed. The committee determined the task force recommendations did not meet the requirements of 1999 Senate Bill No. 2036 because the recommendations did not provide for the combining of the basic care and assisted living service delivery systems.

The committee expressed concern the recommendations developed by the Task Force on Long-Term Care Planning were not in compliance with the requirements of Section 3 of 1999 Senate Bill No. 2036 and asked the Legislative Council chairman to request the Department of Human Services and the State Department of Health prepare a recommendation, to be considered by the 57th Legislative Assembly, describing the conversion of basic care and assisted living facilities into an integrated long-term housing and service delivery system.

Intergovernmental Transfer Program

The 1999 Legislative Assembly passed Senate Bill No. 2168, which established a health care trust fund for making grants and loans for projects that provide alternatives to nursing facility care. The bill also authorizes a funding mechanism, known as intergovernmental transfer, to increase federal Medicaid funding available to the state and provide a source of moneys to be deposited in the health care trust fund. The amount of federal funds to be deposited in the health care trust fund is based on the average difference between Medicare and Medicaid rates for all nursing facilities in the state multiplied by the total number of Medicaid resident days in all nursing facilities. Payments based on this calculation are made to the two government-owned nursing facilities in the state. The amounts paid to the two nursing facilities are subsequently transferred back to the state, less a \$10,000 transaction fee retained by each facility, and deposited in the health care trust fund.

The 1999 Legislative Assembly appropriated \$8.6 million of federal funds (\$4.3 million for loans and grants to nursing facilities and \$4.3 million for the service payments for the elderly and disabled (SPED) program) from the health care trust fund for the 1999-2001 biennium. During the 1999 legislative session, the department significantly underestimated the amount of funds available through the intergovernmental transfer program. The total amount to be deposited in the health care trust fund during the 1999-2001 biennium is now

estimated to be \$43.2 million, \$34.7 million more than originally estimated.

The committee considered information relating to other states currently accessing federal funds through intergovernmental transfer programs. The committee also received testimony regarding projects proposed to be funded through the health care trust fund.

The committee received testimony from a representative of the Department of Human Services relating to the need for a statewide health care needs assessment study. When distributing loans and grants from the health care trust fund, the department must make decisions regarding the appropriate number of long-term care alternative facilities and the level of services that should be provided in each region of the state. A representative of the department indicated that to assist the department in making these decisions, a statewide study should be conducted to examine the future need for long-term care services, as well as other health care services such as hospital, emergency, mental health, dental, and pharmacy services, in each region of the state. The committee learned the Department of Human Services anticipates using moneys generated through the intergovernmental transfer process to conduct a statewide study of long-term care needs. The department will attempt to have the study completed prior to the 2001 legislative session.

The committee received information relating to several projects proposed or in the process of being completed to provide alternatives to nursing facility services, including a cooperative project in Carrington and New Rockford. The cooperative project was proposed to provide an enhanced continuum of care and to reduce the number of skilled care beds in the two communities. The committee learned due to financial difficulties encountered by the facilities, a delay in implementing some aspects of the project, and difficulty accessing loan and grant funds through the health care trust fund, the projects will probably proceed on a smaller scale than originally planned.

The committee received testimony from representatives of the Department of Human Services, the long-term care industry, and the North Dakota Long Term Care Association supporting various uses for the additional funds anticipated to be available through the intergovernmental transfer program, including:

- Encourage community and statewide planning and the development of efficient integrated health care delivery systems.
- Provide low-interest loans or grants to long-term care facilities for remodeling and updating.
- Conduct a statewide health and long-term care needs assessment study to provide a vision and plan for health care in the future.
- Provide a benefits package to long-term care employees similar to the benefits package provided to state employees. (The estimated

cost of the health insurance benefits package, as determined by a representative of the North Dakota Long Term Care Association, for the 60.5 percent of full-time employees in North Dakota long-term care facilities who are currently participating in an employer-sponsored health insurance plan is approximately \$13.8 million per biennium.)

- Fund a quality improvement survey program for nursing facilities.
- Buy out nursing facilities that choose to close.
- Establish a trust fund to provide future funding for programs such as Healthy Steps, the children's health insurance program.

A statewide task force was established to consider the appropriate use for the moneys generated through the intergovernmental transfer program and to examine other issues relating to the program. The Intergovernmental Transfer Statewide Task Force includes legislators and representatives of the Department of Human Services, the North Dakota Long Term Care Association, and the communities involved in the program. The committee learned the task force's preliminary recommendations are that moneys in the health care trust fund be used for:

- Incentive payments, up to a total of \$9 million, to encourage nursing facilities to reduce the number of licensed nursing care beds by 600.
- Loans for nursing facility alternative construction and renovation projects at an annual interest rate of two percent rather than at two percentage points below the market rate.
- A Medicaid reimbursement rate adjustment for all nursing facilities, beginning January 1, 2002, for salary or benefit enhancements in the amount of \$1.50 per full-time equivalent employee per hour.
- Facility transaction fees in the total amount of \$500,000 for the five transactions anticipated during the 1999-2001 and 2001-03 bienniums for each of the two government nursing facilities involved in the transfer process (1999 Senate Bill No. 2168 authorized a transaction fee of \$10,000 per facility per transaction).

The committee learned the Health Care Financing Administration has proposed rules to limit states' ability to access federal funds through the intergovernmental transfer program. For this reason, the future availability of these funds is uncertain. Under the proposed rules, North Dakota would have a five-year transition period to bring the state's Medicaid program into compliance with the new rules. In addition, certain moneys already claimed by the Department of Human Services have been challenged by the Health Care Financing Administration. On August 31, 2000, the Health Care Financing Administration informed the Department of Human Services it did not agree with the method used by the department to calculate North Dakota's first-year

payment. The Health Care Financing Administration has indicated that North Dakota claimed \$13 million more than its plan allowed. The department, however, believes its claim was in accordance with its approved plan. The department intends to appeal the Health Care Financing Administration decision.

Recommendations

As indicated above, the committee received a report from the Task Force on Long-term Care Planning regarding the conversion of basic care and assisted living facilities. The committee expressed its concern the recommendations developed by the Task Force on Long-Term Care Planning were not in compliance with the requirements of Section 3 of 1999 Senate Bill No. 2036 and asked the Legislative Council chairman to request the Department of Human Services and the State Department of Health prepare a recommendation, to be considered by the 57th Legislative Assembly, describing the conversion of basic care and assisted living facilities into an integrated long-term housing and service delivery system. The Legislative Council chairman communicated the committee's request to the Department of Human Services and the State Department of Health.

The committee recommends the 57th Legislative Assembly consider requiring that moneys generated through the intergovernmental transfer process and deposited in the health care trust fund be used for projects and programs relating to the long-term care industry, including the funding of projects that provide alternatives to nursing facility services and projects that reduce nursing facility bed capacity.

CHILDREN'S HEALTH INSURANCE PROGRAM

Section 12 of 1999 Senate Bill No. 2012 established a children's health insurance program and provided that the Department of Human Services must present to the Legislative Council an annual report regarding the program, including enrollment statistics and associated costs. The Legislative Council assigned this duty to the Budget Committee on Health Care.

Background

The 1999 Legislative Assembly established a children's health insurance program to provide health insurance to low-income children not eligible for Medicaid. Section 12 of 1999 Senate Bill No. 2012 authorized the program and provided an income eligibility limit of 140 percent of the federal poverty level. This section also provided that the insurance coverage must be provided through contracts with private insurance carriers, must include copayments and deductibles, and must provide coverage for medical services such as psychiatric and substance abuse services, prescription

medications, preventive screening services, preventive dental and vision services, and prenatal services.

Testimony

The committee learned the Department of Human Services signed a contract with Blue Cross Blue Shield of North Dakota to provide the health insurance coverage for the children's health insurance program named the Healthy Steps program. The contract covers the period October 1, 1999, through June 30, 2001, and provides for a premium rate of \$108.60 per member per month to be paid by the state. The premium rate is based on copayments of \$2 for each prescription, \$50 for each hospital admission, and \$5 for each emergency hospital visit. Federal regulations require that for certain population groups, such as American Indians, no copayments are charged. The monthly premium for those children is \$109.56. Eligibility for the Healthy Steps program is for 12 months, provided the child does not turn 19, leave the household, obtain other health insurance coverage, or fail to report information requested by the department in the fourth and eighth months.

The Department of Human Services estimated approximately 3,800 children are eligible for coverage under the Healthy Steps program at the income limit of 140 percent of poverty level. During the 1999 legislative session, the department estimated approximately 2,000 of those children would be enrolled in the program by the end of fiscal year 2000. The actual number enrolled by the end of the first fiscal year of the biennium was approximately 1,900 children. The department currently estimates approximately 3,000 children will be enrolled in the program by the end of the 1999-2001 biennium.

Outreach programs have been implemented by the Department of Human Services to increase the number of children enrolled in the program. The committee learned the Children's Services Coordinating Committee received a grant from the Robert Wood Johnson Foundation to establish a "covering kids" program as part of a nationwide initiative to assist in identifying and enrolling children in the program, to simplify the enrollment process, and to coordinate the various health insurance programs available to low-income children.

Some health care providers in North Dakota have experienced difficulty collecting reimbursement from the Indian Health Service for services provided to patients determined to be eligible but not enrolled in the Healthy Steps program. The Indian Health Service is a payer of last resort and will not cover services if the patient is eligible for any other coverage. However, the Healthy Steps program only provides payment if coverage was applied for prior to the service being provided. The committee received testimony from a representative of the Indian Health Service indicating the Indian Health Service has increased efforts to encourage the enrollment of tribal members in the Healthy Steps program

and denies coverage only if the tribal member has received benefits counseling and has been told the member is eligible for coverage under the Healthy Steps program but has not applied for coverage.

The Caring Program for Children, a program founded by Blue Cross Blue Shield of North Dakota to provide free primary and preventive health and dental care coverage to North Dakota children, has experienced a decline in the number of children enrolled. Children previously enrolled in the Caring Program for Children but eligible for the Healthy Steps program have been referred to the Healthy Steps program because of the more comprehensive health insurance coverage provided through that program.

The committee discussed the possibility of expanding eligibility for the Health Steps program by increasing the allowable income limitation. The committee learned if the limitation on allowable income is increased from 140 to 170 percent of the federal poverty level, and if 75 percent of eligible children are enrolled, the additional cost for the 2001-03 biennium would be approximately \$3.4 million, of which \$820,000 would be from the general fund. Federal funds available to North Dakota for the children's health insurance program are listed below:

Federal Fiscal Year Ending	North Dakota's Allocation
September 30, 1998	\$5,041,000
September 30, 1999	\$5,017,000
September 30, 2000	\$5,656,000

The federal government allows states two years to spend their federal funds allocation. Therefore, North Dakota had until September 30, 2000, to spend its federal fiscal year 1998 allocation of \$5,041,000. The Department of Human Services estimates approximately \$1.8 million of the federal fiscal year 1998 allocation was spent. As a result, approximately \$3.2 million of North Dakota's federal fiscal year 1998 allocation was not spent and will no longer be available to the state.

Although the Department of Human Services has taken steps to simplify the complexity of the Medicaid eligibility application form, the asset limitation requirements add complexity to the application. The committee learned if the asset limitation for children and pregnant women is eliminated from Medicaid eligibility requirements, the department could combine the Healthy Steps and Medicaid eligibility applications. The committee also learned although income eligibility for the Healthy Steps program is determined on an annual basis, it is determined on a monthly basis for the Medicaid program.

A representative of the Department of Human Services provided an estimate of the fiscal impact of eliminating the asset limitation for Medicaid eligibility for children and pregnant women. It was estimated 1,367 children would become eligible for the Medicaid program if the asset limitation was eliminated. The estimated cost for the 2001-03 biennium of eliminating the

asset limitation for children and pregnant women would be \$1,852,256, of which \$565,286 would be from the general fund.

The department also provided an estimate of the fiscal impact of changing the Medicaid income review period from monthly to annually. It was estimated for federal fiscal year 1998, an additional 3,225 children, would have remained enrolled in the Medicaid program if the income review period had been changed from monthly to annually. The estimated cost for the 2001-03 biennium of changing the Medicaid income review period from monthly to annually would be approximately \$5.3 million, of which \$1.6 million would be from the general fund.

The committee learned changing the income review period from monthly to quarterly would provide some administrative efficiencies but at a lower cost than the proposed change to an annual review period. At the time of the committee's last meeting, no estimate was available regarding the cost of changing from a monthly to a quarterly income review period.

Considerations and Recommendations

The committee considered but did not recommend a bill draft that would have:

- Eliminated the asset limitation for Medicaid eligibility for children and pregnant women (consistent with the Healthy Steps program).
- Changed from monthly to annually the Medicaid income review period for children and pregnant women (consistent with the Healthy Steps program).

The committee did not recommend eliminating the asset limitation for Medicaid due to concern that the result would be an increase in Medicaid enrollment and a decrease in enrollment in the Healthy Steps program.

The committee recommends House Bill No. 1036 to provide for a quarterly rather than annual income review period for children and pregnant women receiving Medicaid benefits.

NURSE LICENSURE EXEMPTIONS FOR MEDICATION ADMINISTRATION

Background

Section 1 of 1999 House Bill No. 1403 adds a new subsection to NDCC Section 43-12.1-04 to provide a temporary exemption (through July 31, 2001) from the Nurse Practices Act to certain persons who provide medication administration. The bill directs the Department of Human Services and the State Board of Nursing to prepare a joint recommendation relating to the temporary exemption. The bill directs the Department of Human Services and the State Board of Nursing to report to the Legislative Council during the 1999-2000 interim regarding the progress made in preparing the

joint recommendation. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

Testimony

The committee received a report from the Department of Human Services and the State Board of Nursing regarding their joint recommendation. The joint recommendation provides that the temporary exemption provided for in 1999 House Bill No. 1403 should be made permanent for certain facilities certified by the Department of Human Services. The statutory changes required to implement this recommendation will be contained in a bill to be introduced by the State Board of Nursing for consideration by the 57th Legislative Assembly. The bill will include a new subsection to NDCC Section 43-12.1-04 to provide a permanent exemption from the Nurse Practices Act for:

The administration of medications, other than by the parenteral route, by staff of a residential treatment center for children licensed under chapter 25-03.2, a treatment or care center for developmentally disabled persons licensed under chapter 25-16, or a residential child care facility licensed under chapter 50-11 certified by the department of human services.

Recommendation

The committee accepted the joint recommendation submitted by the Department of Human Services and the State Board of Nursing and recommends the 57th Legislative Assembly support the recommendation to provide a permanent exemption from the Nurse Practices Act relating to the administration of medication by the staff of certain facilities certified by the Department of Human Services.

BUDGET TOURS

The committee conducted budget tours in the Bottineau area and in Minot. The agencies toured were the International Peace Garden, Dunseith; Minot State University - Bottineau and the Forest Service, Bottineau; Minot State University, North Central Research Extension Center, State Fair Association, and North Central Human Service Center, Minot. The committee received information relating to the status of each agency's 1999-2001 biennial budget, major items anticipated to be included in the 2001-03 biennial budget request, and major capital project needs. The committee also toured the Minot Vocational Adjustment Workshop, Inc., and received information on the programs and services offered by that facility. The tour group minutes are available in the Legislative Council office and will be compiled in a report presented to the Appropriations Committees during the 2001 legislative session.

BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned study responsibilities in five areas.

The committee was assigned the responsibility to monitor the Department of Human Services implementation of the recommended changes to improve the department's administrative structure and to enhance its budget presentation methods contained in Senate Concurrent Resolution No. 4003.

Section 28 of 1999 Senate Bill No. 2012 directed a study of the services provided by the Department of Human Services regional human service centers, including the appropriateness of and justification for continuing human service center programs, the costs and benefits of human service programs, methods for evaluating the effectiveness and outcomes of human service center programs, and the need to establish priorities relating to human service center programs.

The Legislative Council assigned the committee the responsibility to receive reports from the Department of Human Services pursuant to Section 25 of 1999 Senate Bill No. 2012 regarding the department's review of program funding issues, including the appropriateness of maximizing the use of federal funds and replacing reductions in federal funds with state funds, opportunities to reduce general fund program expenditures, the coordination of programs to avoid duplication, and the cost and benefits of programs.

Section 4 of 1999 Senate Bill No. 2114 directed a study of the implementation of the temporary assistance for needy families (TANF) program. In addition, the committee was assigned the following related responsibilities required by law to be conducted by the Legislative Council or a committee designated by the Legislative Council:

- Approve termination of any waiver obtained by the Department of Human Services for the training, education, employment, and management (TEEM) program (North Dakota Century Code (NDCC) Section 50-06-01.8).
- Approve revised administration of the TANF program (NDCC Section 50-09-29).
- Receive reports from the Department of Human Services on the progress in its efforts to determine the most reliable current data concerning the proportion of unemployed adults living in Indian country (Section 5 of 1999 Senate Bill No. 2114).
- Receive reports from the Department of Human Services on the progress in implementing child support income withholding through the state disbursement unit (Section 4 of 1999 House Bill No. 1121).

Senate Concurrent Resolution No. 4036 directed a study of the operation of TANF in North Dakota as it relates to the relationship between the state and the federally recognized Indian tribes in the state. In

addition, Section 3 of 1999 Senate Bill No. 2114 required the Legislative Council to receive reports from the Department of Human Services regarding the progress of any negotiation with any tribal government to establish a pilot project for administration of a tribal family assistance grant.

Committee members were Representatives Jeff Delzer (Chairman), Ron Carlisle, Audrey Cleary, Pat Galvin, Lyle Hanson, Roxanne Jensen, Carol A. Niemeier, Todd Porter, Clara Sue Price, Sally M. Sandvig, Ken Svedjan, and Robin Weisz and Senators Dennis Bercier, Judy L. DeMers, Tom Fischer, Judy Lee, Marv Mutzenberger, David O'Connell, and Russell T. Thane.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

MONITORING OF DEPARTMENT OF HUMAN SERVICES IMPLEMENTATION OF RECOMMENDED CHANGES

Senate Concurrent Resolution No. 4003 urged the Department of Human Services to implement recommendations to improve its administrative structure and to enhance its budget presentation methods, and the committee was assigned the responsibility to monitor the Department of Human Services implementation of these recommendations.

Background

The 1997-98 interim Budget Committee on Human Services conducted a study of the Department of Human Services in which Public Administration Services (PAS) was selected to study the department's organizational structure. The PAS study identified opportunities for improvements for the department and provided 18 recommendations relating to the Department of Human Services administrative structure and budget presentation methods. The 1997-98 interim committee recommended 1999 Senate Concurrent Resolution No. 4003, which urged the Department of Human Services to implement the recommendations resulting from the PAS study.

Department of Human Services Implementation Status Reports

The committee received status reports from representatives of the Department of Human Services on the department's implementation of the recommendations resulting from the PAS study. The following is a summary of the recommendations from the PAS study and the department's progress toward implementation of the recommendations.

Recommendation	Department Action
<p>1. Adopt an organizational structure that reduces the executive director's span of control and improves coordination, communications, and control of staff and field services.</p> <p>2. Improve the budget presentation to the Legislative Assembly by using "Budget in Brief" technology-assisted presentations, maximum use of available software, and information on an Internet web site which includes a review of the Governor's budget guidelines, identification of departmental goals and significant changes from the previous biennium, trend and projection analysis, executive summary of expenditures and revenues, and identification of specific initiatives, new programs and major modifications to existing programs, and programs and services recommended for elimination.</p>	<p>The department reviewed and reorganized its organizational structure so the position of policy director of economic assistance supervises Medicaid, food stamps, low income home energy assistance program (LIHEAP), and TANF.</p> <p>The department proposed a budget presentation format based on the following budget objectives:</p> <ul style="list-style-type: none"> • Provide a basic standard of living. • Support people with disabilities. • Support older adults. • Assist people with mental health and substance abuse issues. • Promote health. • Promote a safe living environment for children. <p>The committee learned proposed changes to the budget presentation method would require approval by the Budget Section pursuant to NDCC Section 54-44.1-07. The department did not request approval for the change and as a result the department's appropriations bill for the 2001-03 biennium will continue to appropriate to specific divisions and entities, including the State Hospital, the Developmental Center, and the eight regional human service centers. Committee members expressed a concern that the budget presentation information correspond with the appropriations bill and the statewide integrated budget and reporting (SIBR) system.</p>
<p>3. Develop and use an executive decision system that provides summary information to management and policy-makers, allowing access to the information from an Internet web site or data warehousing.</p>	<p>The department made no plans for implementation of the recommendation.</p>
<p>4. Identify core and essential services, inform legislative committees, and disseminate this information to the public.</p>	<p>As part of the department's strategic planning process, the department completed program purpose statements and developed a listing of services provided by the department. Currently, the department has made no plans to share the department's strategic plan with the public.</p>
<p>5. Improve county and private sector collaboration by emphasizing and searching for ways to involve the counties and the private sector in planning and implementing programs.</p>	<p>The department participated in the following collaborative efforts:</p> <ul style="list-style-type: none"> • Ongoing meetings with providers and provider organizations. • Monthly meetings of the North Dakota Association of County Social Service Directors. • Joint subcommittees in the areas of children and family services, technology, aging, and finance. <p>In addition, each of the human service centers held meetings with the counties in their regions to discuss the strategic planning process.</p>
<p>6. Improve private provider relations by requiring department staff to explain payment rate calculations and audit findings to providers and by providing basic information and new rules on the department's Internet web site.</p>	<p>The department has made explanations of ratesetting and audit findings available to providers but has no plans to provide basic information and department rules on the Internet.</p>
<p>7. Review inspection and licensing requirements for programs and facilities to provide for consistent administration of programs, decentralizing of inspections, and retaining centralized standard setting and quality control authority.</p>	<p>The department began the process of reviewing inspection and licensing requirements for programs and facilities with an emphasis on assuring that licensing standards are consistent across programs and provide a baseline for program operation.</p>

Recommendation	Department Action
<p>8. Implement a strategic planning, evaluation, and review capability that may include:</p> <ul style="list-style-type: none"> a. A budgeting, planning, and evaluation division, under the control of a newly created assistant director position, which includes quality control and research and statistics functions and provides through a new position that could be filled on a temporary basis from university personnel long-range vision and strategic planning; b. An ombudsman/troubleshooter position and an enhanced public information function to provide information regarding department programs and serve as an informal appeals and complaint resolution function; and c. An information resource management unit, which includes the technical eligibility computer system, to improve the quality of public and internal information. 	<p>The department implemented an ongoing strategic-planning process, but no separate planning division was created since planning is seen as an integral part of each manager's job. The department transferred budget functions previously performed by the Research and Statistics Division to the Fiscal Administration Division and instructed the Research and Statistics Division to place a greater emphasis on program evaluation.</p>
<p>9. Develop an information technology master plan that supports department goals and objectives and the systematic planning process and prioritizes technology needs.</p>	<p>The department completed an information technology plan in accordance with NDCC Section 54-59-11.</p>
<p>10. Improve client satisfaction survey methodology and encourage counties and private providers to conduct client satisfaction surveys.</p>	<p>The human service centers are in the process of testing other methods of determining client satisfaction. The Mental Health Statistical Improvement Project, which provides assessment of client progress and client satisfaction, is a pilot at the Badlands Human Service Center and is expected to be extended statewide.</p>
<p>11. Consider the consolidation of the Medical Services and Public Assistance Divisions, including the training, education, employment, and management function, into a Financial and Medical Assistance Division and the consolidation of Finance and Office Services and centralized collections in a Management Support Division.</p>	<p>The policy director position incorporates medical and public assistance policy and the Fiscal Administration Division incorporates finance, audit resolution, office services, and centralized collections.</p>
<p>12. Consider merging children's special health services into the Children and Family Services Division.</p>	<p>The department has not considered this recommendation.</p>
<p>13. Address key person succession planning by developing department staff through the possible use of "career ladders," training incentives, and performance bonuses or obtaining executives "on detail" from the private sector and universities.</p>	<p>The department has assigned the responsibility of addressing key person succession to the Human Resources Division.</p>
<p>14. Review and make recommendations for implementation of other states' innovative methods of service provision.</p>	<p>The department plans to continue its practice of conducting ongoing reviews of other states' innovative methods of service through associations with national organizations. In addition, at the invitation of the State Auditor's office, the department participated in a performance audit of the Child Support Enforcement Division.</p>
<p>15. Review and make recommendations regarding the Medicaid spending reduction techniques identified by the consultant and their applicability to North Dakota.</p>	<p>The department implemented an intergovernmental transfer program and established a health care trust fund to provide funding for providers to transition from traditional nursing facilities to other less-restrictive care facilities pursuant to 1999 Senate Bill No. 2168. The department has received approximately \$43 million through the program, funded 22 feasibility studies, and awarded grant funds to three projects. The department also funded a portion of the service payments for the elderly and disabled (SPED) program from the health care trust fund.</p>
<p>16. Consider child protection fund shift initiatives that are based upon shifting eligible "kinship" foster care from TANF child-only grants to foster care payments.</p>	<p>The department considered implementing child protection fund shift initiatives but decided against it because implementation would require additional state funds. The</p>

Recommendation	Department Action
17. Consider providing incentives for public/private collaborative operation of integrated service centers at the district level, incorporating managed care techniques, and including a pilot project with performance goals.	<p>department plans to continue its ongoing analysis of the use of foster care and TANF funding.</p> <p>The department reported an increase in public/private collaboration especially in regard to State Hospital alternative projects. The department plans to explore a managed care waiver for children's mental health services.</p>
18. Consider supporting and assisting in the implementation of a performance management system that includes measurement criteria that assist in setting departmental goals, allocate and prioritize resources, and provide for reporting on the success in meeting goals.	<p>The department implemented an ongoing strategic planning process that centers around the concept of managing for results.</p>

**Department of Human Services
Strategic Planning Process**

Senate Concurrent Resolution No. 4003 also urged the Department of Human Services to develop a strategic business plan that identifies departmental goals and objectives, client service needs, and strategies for service delivery, monitors performance, and adjusts service delivery to provide priority client services in a cost-effective and efficient manner. The committee was assigned the responsibility of monitoring the department's progress in implementing this strategic plan.

The committee learned all divisions of the Department of Human Services, including the human service centers, the State Hospital, and the Developmental Center, completed strategic plans that were reviewed and approved by the department's executive office. Each plan contained a program purpose statement that clearly identified the major services provided, immediate customers served, the intended benefits to those customers, and performance measures for results, demand, output, and efficiency. Each of the human service centers met with the county directors in the respective regions and reviewed the department's overall plan and the human service center's plan.

As part of the strategic planning process, the Department of Human Services is linking the strategic plan performance measures to employees' critical job elements, which are work plans to be used to evaluate employees. This will allow employees to identify how they contribute to each program and the department as a whole. The department has completed the process of rewriting senior managers' critical job elements to include performance measures from the strategic plan and plans to complete the process for all employees by the end of the 1999-2001 biennium.

The Department of Human Services plans to continue the strategic planning process by conducting an external environmental scanning and forecasting effort to establish the base for strategic results measures for the 2001-03 biennium.

Committee Conclusion

The committee does not make any recommendations regarding its monitoring of the Department of Human Services implementation of recommended administrative and budget presentation method changes. However, the committee commends the Department of Human Services on that agency's development and implementation of a strategic planning process.

**STUDY OF HUMAN SERVICE
CENTER SERVICES**

Section 28 of 1999 Senate Bill No. 2012 directed a study of the services provided by the Department of Human Services regional human service centers, including the appropriateness of and justification for continuing human service center programs, the costs and benefits of human service programs, methods for evaluating the effectiveness and outcomes of human service center programs, and the need to establish priorities relating to human service center programs.

Background

The Department of Human Services provides direct delivery of services to individuals and families through its eight human service centers--Northwest Human Service Center in Williston, North Central Human Service Center in Minot, Lake Region Human Service Center in Devils Lake, Northeast Human Service Center in Grand Forks, Southeast Human Service Center in Fargo, South Central Human Service Center in Jamestown, West Central Human Service Center in Bismarck, and Badlands Human Service Center in Dickinson. Total spending provided by the 1999 Legislative Assembly for the human service centers was \$101,498,915, of which \$46,666,746 was from the state general fund. The legislative appropriations for the eight human service centers include authorization for 883.80 full-time equivalent (FTE) positions for the 1999-2001 biennium.

The following schedule provides information regarding the 1999-2001 biennium appropriation and authorized FTE levels for each human service center:

	1999-2001 Biennium Appropriation			FTE
	General Fund	Other Funds	Total	
Northwest Human Service Center	\$4,102,011	\$3,554,087	\$7,656,098	67.00
North Central Human Service Center	7,321,844	7,030,328	14,352,172	110.75
Lake Region Human Service Center	4,296,195	3,086,833	7,383,028	66.00
Northeast Human Service Center	6,675,924	10,589,332	17,265,256	157.65
Southeast Human Service Center	7,714,051	10,922,681	18,636,732	181.75
South Central Human Service Center	5,045,074	4,341,654	9,386,728	79.00
West Central Human Service Center	7,237,801	10,680,615	17,918,416	131.15
Badlands Human Service Center	4,273,846	4,626,639	8,900,485	90.50
Total	\$46,666,746	\$54,832,169	\$101,498,915	883.80

Human Service Center Services

The committee learned each human service center is structured in a similar manner with the following divisions:

1. Acute care.
2. Extended care.
3. Alcohol and drugs.
4. Developmental disabilities.
5. Aging services.
6. Vocational rehabilitation.
7. Supervision of county social service programs.
8. Children's services.

The committee learned the human service centers provide services in the following program areas:

1. Clinical.
2. Substance abuse.
3. Developmental disabilities.
4. Mentally ill.
5. Vocational rehabilitation.
6. Physically disabled.
7. Emotionally disturbed.

Human Service Center Caseloads

The committee learned for fiscal year 2000, the unduplicated count of clients receiving services from the eight human service centers was 27,659, and the statewide adult and adolescent caseloads were 33,958 and 8,140, respectively. The total caseload of 42,098 was greater than the unduplicated client count since clients can receive multiple services and are counted as a part of the caseload for each of the programs.

The following schedule provides information regarding the unduplicated count of clients and adult and adolescent caseloads for fiscal years 1998-2000:

Fiscal Year	Unduplicated Clients	Adult Caseload	Adolescent Caseload	Total Caseload
1998	25,990	31,314	8,031	39,345
1999	26,833	32,379	8,269	40,648
2000	27,659	33,958	8,140	42,098

The committee learned the type and duration of service provided to a client is determined by the human service center multidisciplinary team and is specified on the comprehensive treatment plan as required by licensure standards. For fiscal year 1999, the eight human service centers provided 3,071,938 units of service which were 15 minutes in duration, 157,426 residential

units of service which were 24 hours in duration, and 70,387 medication administration and review units of service.

Human Service Center Contracts for Services

The committee reviewed information regarding human service center contracts for services and learned contract expenditures for the 1997-99 biennium for all human service centers were \$18,613,549. When reviewed early in the biennium, human service centers' contracts issued to date for the 1999-2001 biennium were \$16,282,516.

Human Service Center Administrative Costs

The committee reviewed information regarding administrative costs at each of the human service centers and learned the total administrative budget for the human service centers for the 1999-2001 biennium was \$13,519,477.

The following schedule provides information regarding the 1999-2001 biennium administrative cost budget for each human service center:

	1999-2001 Biennium Administrative Budget	Percentage of the Total 1999-2001 Biennium Administrative Budget
Northwest Human Service Center	\$1,409,607	10.4%
North Central Human Service Center	1,959,301	14.5%
Lake Region Human Service Center	1,289,568	9.5%
Northeast Human Service Center	1,852,994	13.7%
Southeast Human Service Center	2,065,828	15.3%
South Central Human Service Center	1,426,942	10.6%
West Central Human Service Center	2,033,082	15%
Badlands Human Service Center	1,482,155	11%
Total	\$13,519,477	100%

Program Evaluation

The committee learned all human service centers reviewed intended outcomes and effectiveness of

programs during the department's strategic planning process. A pilot program evaluation project, Mental Health Statistical Improvement Project, was implemented by the Badlands Human Service Center. The project provides detailed assessment of client progress and satisfaction and is expected to be implemented by other human service centers. The West Central Human Service Center plans to implement new program evaluation methods such as a referral source survey that would provide information regarding recipients' reactions relating to appropriateness and timeliness of services provided.

Mental Health Case Aide Pilot Program

The committee learned the West Central Human Service Center implemented a mental health case aide pilot program by developing a case aide certified care provider training curriculum available through Bismarck State College which consists of seven core modules and 44 hours of training. At the human service center, the case aides were assigned to provide assistance to the mental health case managers, which allowed the case managers to have an increased caseload and provide more direct contact with recipients. The use of case aides also allowed the human service center to reduce psychiatric admissions to the State Hospital, to reduce the average overall cost per client, and to provide additional services within the community. The pilot program was monitored and also implemented at the Southeast Human Service Center and the South Central Human Service Center.

Adult Protection Services

The committee received information relating to adult protection services provided by the human service centers. The committee learned approximately \$110,000 of federal Older Americans Act funds were received by the human service centers in the last months of the 1997-99 biennium. The human service centers used the funding to explore options for working with other agencies to carry out elderly abuse prevention activities. The activities developed were limited because the funds will not be available beyond the 1999-2001 biennium.

Vocational Rehabilitation Program

The committee received information relating to the vocational rehabilitation program. The committee learned the total number of clients served in federal fiscal year 1999 was 6,969, of which 904 were rehabilitated and employed. The program's rehabilitation rate for federal fiscal year 1999 was 66 percent as determined by comparing the number of clients employed during the federal fiscal year of 904 to the number of cases closed during the federal fiscal year of 1,379.

North Dakota Association of County Social Service Directors Testimony

Representatives of the North Dakota Association of County Social Service Directors informed the committee that the Department of Human Services completed an assessment of the Northwest Human Service Center in relation to the service needs for the region, the best ways to meet those needs, and identification of the appropriate delivery and administrative structure. Representatives of the association are concerned there are areas within the Department of Human Services in which there are not adequate staff and resources available to meet all the program delivery needs.

Committee Conclusion

The committee does not make any recommendations regarding its study of human service center services.

DEPARTMENT OF HUMAN SERVICES PROGRAM FUNDING REVIEW

Section 25 of 1999 Senate Bill No. 2012 required the Department of Human Services to review departmental program funding issues during the 1999-2000 interim including:

- The appropriateness of maximizing the use of federal funds;
- The opportunities to reduce general fund program expenditures;
- The appropriate methods to provide detailed justification prior to the expansion of programs;
- The appropriateness of the state replacing reductions in federal funds with state funds;
- The coordination of programs to avoid duplication in program delivery; and
- The cost and benefit of programs.

Department of Human Services Program Funding Issues

The committee received the following information from the Department of Human Services on the department's review of program funding issues:

- To maximize the use of federal funds, the department scrutinizes program expenditures and contributes the appropriate amount of general fund moneys to ensure the necessary federal funds are accessed.
- To reduce general fund expenditures, the department requires entities contracted with to provide a portion of the matching funds to enable the department to access federal funds without increasing department general fund requirements. The department also accesses additional federal moneys for administrative costs through the use of a federally approved cost allocation plan.
- To provide detailed justification prior to the expansion of programs, the department's

program administrators review the number of individuals to be served, the length of waiting lists in the program, the statutory requirements of the department to provide the service, and the availability of funding to provide the service.

- To determine the appropriateness of the state replacing reductions in federal funds with state resources, the department reviews the general fund requirements to access the federal funds and the duration of the federal program before applying for new federal funds.
- To coordinate programs to avoid duplication in program delivery, the department attempts to ensure programs are not duplicated by establishing open communication within the department through biweekly senior management meetings, monthly meetings with the human service centers and institutions, and monthly meetings with county social service agencies.
- To determine the cost and benefit of programs, the department analyzes the cost of each program or service, the expected benefits or outcomes, whether or not the program aligns with the mission of the department, and whether or not the department is statutorily required to provide the service prior to establishing a program.

Strategic Planning Impact

The committee learned the Department of Human Services addressed program funding issues during the department's strategic planning process with special emphasis on the coordination of programs to reduce duplicative program delivery efforts and to determine the cost and benefit of programs. One of the main purposes of the strategic planning process is to identify department goals and objectives with methods to measure the department's effectiveness. The practice of reviewing the general fund and federal fund cost of a program is determined to be one measure of the effectiveness and efficiency of a program.

Department of Human Services Comments

The committee received information from a representative of the Department of Human Services regarding a federal reimbursement study conducted during the 1993-95 biennium. The committee learned that in 1993 the state was contacted by Maximus with a proposal to conduct a study to identify ways for the Department of Human Services to increase federal reimbursement funding. After conducting a preliminary analysis, Maximus concluded the Department of Human Services was maximizing federal funding available, and no significant additional opportunities existed to obtain additional federal reimbursement.

Committee Conclusion

The committee does not make any recommendations regarding its study of the department of human services program funding review.

STUDY OF THE IMPLEMENTATION OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

The committee was assigned:

- A study of the implementation of the temporary assistance for needy families (TANF) program. (Section 4 of 1999 Senate Bill No. 2114)
- Authority to approve termination of any waiver obtained by the Department of Human Services for the TEEM program. (NDCC Section 50-06-01.8)
- Authority to approve revised administration of the TANF program. (NDCC Section 50-09-29)
- Responsibility to receive reports on efforts to determine the most reliable data on the proportion of unemployed adults living in Indian country. (Section 5 of 1999 Senate Bill No. 2114)
- Responsibility to receive reports on the progress in implementing child support income withholding through the state disbursement unit. (Section 4 of 1999 House Bill No. 1121)

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 became law in August 1996. The Act provided for substantial welfare reform, including a TANF block grant.

The TANF block grant replaces the aid to families with dependent children (AFDC) program, allows the state to develop its assistance program, and provides North Dakota approximately \$26.4 million annually. The block grant:

- Includes a 15 percent cap on state administrative costs.
- Requires that the Legislative Assembly appropriate the state's block grant funds.
- Requires an 80 percent maintenance of effort based on state spending for fiscal year 1994.
- Allows transfers of block grant moneys up to 30 percent to the social services block grant and up to 10 percent to the child care block grant.
- Requires client work participation.
- Provides for sanctions and penalties against states for failing to meet work participation rates.
- Requires states to implement child support enforcement requirements.
- Limits individual receipt of welfare benefits to a five-year time period.

The Act requires the state to meet the following work participation requirements for recipients on assistance:

Fiscal year 1997	25%
Fiscal year 1998	30%
Fiscal year 1999	35%
Fiscal year 2000	40%
Fiscal year 2001	45%
Fiscal year 2002 and beyond	50%

The Act requires participants to work a minimum number of hours per week to count in meeting the state's work participation rate. The minimum number of work hours required is 20 hours per week for fiscal years 1997 and 1998, 25 hours per week for fiscal year 1999, and 30 hours per week for fiscal year 2000 and beyond. These work participation requirements can be reduced if the state experiences a significant caseload reduction.

States will be sanctioned by a grant reduction of five percent the first year it fails to meet the work participation rates, and if the state continues to fail to meet the requirements, penalties increase by two percent each year to a maximum of 21 percent of the grant. Penalties can be reduced for good cause, such as an economic recession.

TANF Assistance Appropriation

The 1999 Legislative Assembly appropriated \$25 million, \$18.6 million in federal funds and \$6.4 million of other funds, for TANF program cash assistance payments for the 1999-2001 biennium. In October 1999 due to a TANF regulation that requires state funds to be spent on cash assistance under the TANF program in order to meet the state's maintenance of effort requirements, the Emergency Commission and the Budget Section approved the transfer of \$5.5 million of general fund moneys from the foster care program to the TANF program and \$5.5 million of federal funds from the TANF program to the foster care program. As adjusted, funding for TANF program cash assistance payments for the 1999-2001 biennium includes \$5.5 million from the general fund, \$13.1 million of federal funds, and \$6.4 million of other funds.

TANF Federal Funding

The state received a one-time "high performance" bonus of \$887,213 due to North Dakota's high ranking for the percentage of TANF recipients becoming employed. This is in addition to the \$26.4 million of federal TANF funds the state receives annually. The department plans to use the "high performance" bonus funds in the same manner as other federal TANF funds. The department plans to have \$10.9 million of TANF funds carryover available for the 2001-03 biennium.

TANF Caseloads

The committee received reports from the Department of Human Services on the status of TANF caseloads. The department anticipated the TANF caseload to be 2,824 families for July 1999 and to decline slightly to 2,721 families in June 2001. As of July 2000, the TANF

caseload was 2,790 families compared to the estimate used in the 1999-2001 appropriation for that month of 2,742.

Maintenance of Effort and Work Participation Requirements

The TANF block grant requires the state to spend each year at least 80 percent of state spending in federal fiscal year 1994, or 75 percent if the state meets work participation requirements on qualified state expenditures as its maintenance of effort. The work participation requirement for fiscal year 1999 was 35 percent. However, due to the state's decrease in TANF caseloads the state received a credit of 34.2 percent to adjust the rate to 0.8 percent. North Dakota achieved a work participation rate of 31.7 percent for fiscal year 1999 and, therefore, received a reduction in the 1999-2001 biennium maintenance of effort requirement from \$19.4 million to \$18 million. North Dakota projects spending approximately \$18.1 million on TANF grants, work activities, and administration to meet maintenance of effort requirements.

National Conference of State Legislatures Testimony

The committee received information from a representative of the National Conference of State Legislatures on welfare reform and learned all TANF program expenditures must meet one of the following purposes:

- Provide assistance to needy families;
- End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies; or
- Encourage the formation and maintenance of two-parent families.

The committee also learned:

- The state may transfer up to 30 percent of TANF funds each fiscal year to the child care development fund and to the social services block grant program. No more than 10 percent of the grant amount for a fiscal year may be transferred to the social services block grant, and if transferred, up to 20 percent of the annual grant could be transferred to the child care development fund. Once a state transfers funds to either program, it must use the funds in accordance with the rules of that program.
- The state may use TANF funds for traditional assistance benefits or for benefits not considered to be traditional assistance. Traditional assistance benefits include benefits directed at basic needs such as food, clothing, shelter, utilities, household goods, and personal care items. Nontraditional assistance benefits are short-term, nonrecurring benefits (up to four months) or any

benefit that meets one of the four TANF purposes and is not for ongoing basic needs. The definition of "assistance" is significant because families receiving TANF assistance must meet time limit, work participation, child support assignment, and reporting requirements, and nontraditional assistance benefits are not subject to those requirements. In addition, unobligated TANF balances from prior years or carryover TANF funds may only be spent on "assistance."

- The state may spend its maintenance of effort funds in one of three ways:

Commingled with federal funds and spent in the TANF program. These expenditures are the least flexible because they are subject to federal funding restrictions, TANF requirements, and maintenance of effort limitations.

Segregated from federal funds but spent in the TANF program. These expenditures are subject to many TANF requirements, including work participation, child support assignment, and reporting requirements. However, time limits and federal funding restrictions do not apply.

Operated outside of the TANF program in separate state programs. These expenditures are very flexible and are not subject to the general TANF requirements. However, they must be consistent with the goals of the TANF law and other maintenance of effort requirements.

- The state is required to use federal TANF funds on nonmedical services such as screening services, assessments, or services by nonmedical professionals and may use state maintenance of effort funds on medical services that are considered to be services received in a hospital, treatment by a doctor, or health insurance.
- Many states use federal TANF funds for benefits with time requirements and state maintenance of effort funds for more flexible programs.

Department of Human Services Statutory Changes Under Consideration

The committee learned the Department of Human Services is considering introducing a bill during the 2001 Legislative Assembly to make the following statutory changes to the TANF program:

- Replace all references to TEEM and the TEEM waiver with TANF.
- Remove unnecessary provisions detailing the transition of AFDC to TANF and associated deadlines for changes because the transition has been completed and the deadlines have past.
- Remove provisions intended to discourage people from moving into North Dakota from a

state with a shorter lifetime limit. The United States Supreme Court found similar language to be unconstitutional. North Dakota has never applied the law, and the department believes the language should be removed.

- Revise provisions complying with the federal child support assignment provisions.

Data Relating to Unemployment Rates in Indian Country

The committee received reports from the Department of Human Services regarding unemployment rates in Indian country. The committee learned the federal TANF regulations require states to exempt the months of assistance received by all adults living within Indian country from the TANF 60-month benefit limit when the unemployment rate is at least 50 percent. The Turtle Mountain Reservation had an unemployment rate greater than 50 percent for all months to date of the 1999-2001 biennium. The Spirit Lake Reservation had unemployment above 50 percent for several months, but the rate dropped below 50 percent for April 2000 and subsequent months. The Standing Rock and Three Affiliated Tribes Reservations had unemployment below 50 percent for all months to date.

The committee learned NDCC Section 50-09-29 requires the department to use the unemployment data provided by Job Service North Dakota to determine the unemployment rate of adults living in Indian country. The unemployment data provided by the Bureau of Indian Affairs cannot be used because it does not comply with the federal TANF regulations that require unemployment data to be collected every month and to include all adults living in Indian country. The Bureau of Indian Affairs unemployment data is collected only every two years and is collected for only American Indian people.

Training, Education, Employment, and Management Pilot Project

The committee received information from a representative of the Department of Human Services regarding a pilot training, education, employment, and management (TEEM) project in Rolette County. The committee learned the goal of this "Fresh Start Project" is to provide TEEM recipients employment readiness training through assessments, job coaches, and mentors. For the program's first year of operation, 13 of the 21 individuals enrolled in the classroom component completed the coursework and graduated. There were 12 individuals enrolled in the program's work activity component of which seven obtained paid employment, three are participating in work experience, and two are completing general equivalency diploma programs. For the program's second year of operation which began in the fall of 2000, the department is considering providing financial incentives to participants who receive a general

equivalency diploma, maintain full-time employment for six months, and successfully complete the 15-week session.

In response to a reduction in TANF caseloads and the increasing proportion of the caseload having significant barriers to self-sufficiency, the department plans on implementing other demonstration projects in the Fargo, Grand Forks, and Williston areas.

Family Violence Option

The committee received information from a representative of the North Dakota Council on Abused Women's Services regarding the following issues, concerns, and suggestions relating to domestic violence issues and TANF:

- The family violence option that waives the work requirements for victims of domestic violence for a limited time until they are able to find safe, affordable housing and dependable child care and to resolve legal problems has been available in North Dakota since the state's TANF legislation was passed but has not been utilized.
- The TANF program's work requirements and 60-month eligibility requirement should be waived for as long as necessary for past or present victims of domestic violence or those at risk of further violence.
- The Department of Human Services screening and referral procedures should be clarified to provide for universal notification of the family violence option and to ensure referral to local domestic violence organizations for assessment and supportive services.
- The statute relating to the administration of the TANF program should be clarified to ensure that all applicants have been properly notified of the rights available to them under the family violence option.

Individual Development Accounts

The committee received information from a representative of the Department of Human Services regarding individual development accounts (IDA). An IDA is a special savings account in which a welfare recipient may accumulate earned income. The committee learned the state did not implement rules for the development of IDAs at the time of welfare reform implementation because higher asset limits allowed TANF recipients the ability to build savings without being penalized, and moneys in IDAs may only be used for tuition, purchase of a new home, or business capitalization.

A representative of the North Dakota Council on Abused Women's Services informed the committee the implementation of IDAs would encourage TANF recipient savings and could allow the recipients to receive a match from the state, local, or nonprofit sectors.

Teenage Pregnancy and Abstinence Programs

The committee received information from a representative of the North Dakota State Department of Health regarding teenage pregnancy and abstinence programs. The committee learned the State Department of Health coordinates the abstinence education grant program with the state's eight regional and four tribal children's services coordinating committees. The annual funding for the program totals \$221,429, which includes \$126,220 in federal funds and \$95,219 in matching state and local funds, and the regional and tribal children's services coordinating committees are responsible for selecting programs within the region to carry out the abstinence education.

North Dakota Association of County Social Service Directors Testimony

Representatives of the North Dakota Association of County Social Service Directors expressed concerns regarding welfare reform. The committee learned counties believe the TANF assessment process needs to be evaluated as clients are "working" the assessment process so that job referrals are not being generated. The counties are also concerned that families who have not attained self-sufficiency at the end of the five years or 60-month limit on assistance payments will either become a county responsibility or a state general assistance program responsibility or be left to fend for themselves.

Child Support Income Withholding

Section 4 of 1999 House Bill No. 1121 provided for the following statutory changes:

- Section 14-09-08.1 was amended to provide that effective July 1, 1999, the clerk of court rather than the state disbursement unit is to send notice of arrears whenever there is failure to make child support payments.
- Section 14-09-09.29 was amended to provide that the clerks of court maintain responsibility for the administration of income withholding for other than Title IV-D cases. The change is effective through January 15, 2001, and after that date, the state assumes responsibility for administration of income withholding for all child support cases.

The committee received information from a representative of the Department of Human Services regarding child support income withholding. The committee learned the department anticipates the transfer of the responsibility of administration of income withholding for other than Title IV-D cases from the clerks of court to the department to occur on schedule. The department is considering entering into a contract with an entity, such as a clerks of court office or a regional child care enforcement unit, experienced in the administration of income withholding rather than performing the task

in-house because the department lacks staff, space, and experience.

Committee Recommendations

The committee recommends House Bill No. 1037 to implement the family violence option by amending NDCC Section 50-09-29 relating to the administration of the TANF program to provide that parents who are victims of domestic violence be included in the 20 percent of the TANF caseload exempt from the 60-month benefit limit and be excluded from the TANF program's work activity requirements.

At the committee's last meeting in response to testimony regarding abstinence program funding, the committee recognized that there is a minimal amount of funds provided by the state for the abstinence education grant program and recommends Senate Bill No. 2030 to provide additional funding of \$150,000 from the general fund for the 2001-03 biennium to the State Department of Health for state support of the sexual abstinence education grant program.

STUDY OF TRIBAL TANF ISSUES

Senate Concurrent Resolution No. 4036 directed a study of the operation of the TANF program in North Dakota as it relates to the relationship between the state and the federally recognized Indian tribes in the state. Section 3 of 1999 Senate Bill No. 2114 required the Department of Human Services to report to the Legislative Council regarding the progress of any negotiation with any tribal government to establish a pilot project for administration of a tribal family assistance grant. The committee was assigned this responsibility.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allows Indian tribes with a federally approved tribal assistance plan to directly receive and administer the TANF block grant funds for a tribal welfare program. Each tribe's share is based on the federal portion of AFDC money spent in federal fiscal year 1994 for Indian families in the service area described. The state's TANF block grant is to be reduced by any amount provided directly to a tribe, and the state's maintenance of effort requirement is also to be reduced appropriately. The state's contribution for a pilot tribal TANF program is limited to the state per client welfare cost in federal fiscal year 1994 times the tribe's number of welfare clients in April 1999.

The following schedule is the Department of Human Services estimate of the annual federal funds available to each tribe in North Dakota for administering a tribal TANF program and the corresponding decrease in the state's maintenance of efforts spending requirements:

Tribe	Federal Funds Available	Reduction in State Maintenance of Effort
Standing Rock	\$747,878	\$216,768
Three Affiliated Tribes	\$601,067	\$192,930
Spirit Lake	\$820,316	\$248,590
Turtle Mountain	\$3,002,353	\$883,854

United States Department of Health and Human Services Testimony

The committee received testimony from a representative of the Division of Tribal Services, United States Department of Health and Human Services stating that:

- The TANF program ended 60 years of welfare entitlement and provides tribes with the opportunity to administer welfare programs resulting in the need for tribes to reexamine and analyze their tribal governmental and community infrastructures.
- As states have been engaged in the administration of welfare programs for over 60 years, tribes cannot be expected to immediately step in and administer welfare programs without problems, and ongoing state and federal assistance, communication, collaboration, and technical and financial support is necessary.
- As of September 1999, there were 21 approved Indian TANF plans in the United States serving approximately 4,460 families and an estimated 15,600 members. The tribal plans are located in 12 states, and the majority of those states are continuing to provide the same percentage of state matching funds to the tribal grants that they were providing in state administered programs.
- A policy to provide incentives for tribal members to relocate off the reservation would not be successful because tribal members do not want to leave their homes and families.

National Conference of State Legislatures Testimony

The committee received information from a representative of the National Conference of State Legislatures on tribal TANF programs. The committee learned federal regulations allow tribes to design their own TANF programs with flexibility similar to what is found in state TANF programs. The first step for developing a tribal TANF program is for the tribe to file a letter of intent with the United States Department of Health and Human Services followed up by a detailed implementation plan. In structuring a welfare program, the tribe has the flexibility to establish its own benefits, eligibility requirements, work participation rates, time limits, and definitions of work and family. The tribe may receive federal funding for all welfare eligible families in the tribe's defined service area but may develop a tribal TANF program that serves only a portion of the families. Therefore, the state may have an obligation to continue

to provide services to members of tribes operating a tribal TANF program based on the tribal TANF service plan. If the plan is accepted, the tribe is required to give the state a 30-day notice of its withdrawal from the state TANF program.

Tribal Negotiations

The committee learned the Department of Human Services sent a letter to all tribal chairs to encourage tribes to participate in a tribal TANF program. Representatives from the Turtle Mountain Band of Chippewa informally notified the Department of Human Services that they do not wish to pursue a tribal TANF program until after federal reauthorization of TANF in 2002.

Representatives of the Three Affiliated Tribes notified the department that the federal funds available are not sufficient to operate a tribal TANF program for 100 percent of the reservation caseload, but the tribe is actively pursuing administering a limited tribal TANF program. The committee learned the Three Affiliated Tribes' proposed tribal TANF program would use the federal funds available to provide case management services concentrating on education for all tribally enrolled members in the five counties that contain the reservation. The proposed tribal TANF program would allow the tribe to determine appropriate work activities and work performance levels and use tribal data to calculate the unemployment rate. The tribal TANF proposal does not include tribal payment of TANF assistance grants, and as a result the state would be responsible for these grants. The tribe would coordinate with the state to continue to use the state's administrative infrastructure for eligibility determination and grant payments. The tribal TANF proposal includes a provision that would provide that any unused federal funds would be provided to the state to assist with the payment of TANF assistance grants. The committee learned the department is not aware of any approved tribal TANF programs that only provide case management services to tribal TANF recipients.

Committee Conclusions

The committee does not make any recommendations regarding its study of tribal temporary aid for needy families issues.

OTHER INFORMATION

Status of Medicaid Drug Expenditures

The committee received information from a representative of the Department of Human Services regarding the status of Medicaid drug expenditures and the department's plans to deal with a potential shortfall. The committee learned the department anticipates exceeding the 1999-2001 biennium appropriation for drug expenditures of \$50.3 million by \$13 million due to increasing cost of generic drugs and the introduction of new, more expensive drugs as an alternative to older, less

expensive drugs. The department expects to absorb the shortfall of funds with savings in other areas such as nursing facilities and is considering legislation to implement a cost-saving prior authorization process for a selected class of drugs which would require the use of generic or over-the-counter products prior to a more expensive brand name drug being prescribed.

Health Insurance Portability and Accountability Act

The committee received information from the Department of Human Services regarding the potential impact to the state of the requirements of the Health Insurance Portability and Accountability Act (HIPAA). The goal of the Act is to reduce the cost and administrative burdens of health care by standardizing electronic transmission of health care data. The Act contains nine regulations that are centered around transactions, identifiers, security, and confidentiality. The regulations require compliance within two years and 60 days from the date of each final regulation. The Health Care Financing Administration finalized the regulations for electronic transactions on August 17, 2000. Therefore, compliance is required by October 16, 2002. The regulations for provider identifier, employer identifier, security and electronic signature, and privacy are expected to be finalized by the end of 2000. The department has prepared an optional adjustment budget request to the 2001-03 biennium budget of \$25 million of which \$7.75 million is from the general fund to cover the estimated cost to implement the regulations.

Child Support Program Update

The committee received information from a representative of the Department of Human Services regarding the department's child support computer system and the implementation of the state disbursement unit for child support payments. The committee learned the department received conditional certification of its child support computer system in May 2000 and plans to achieve full certification by the end of December 2000. The state disbursement unit is operational and on the average is receiving about \$6 million per month from about 20,000 payments and sending out approximately 30,000 payments to custodial parents.

Study of Gaming Addiction Problems

The committee received information from a representative of the Governor's office regarding the study of gaming addiction problems required by the Indian gaming compact. Gemini Research Limited and the University of North Dakota Social Science Research Institute were selected to complete a gaming addiction study required by gaming compacts signed by the Governor and representatives of the tribal governments. The designated objectives of the study that is estimated to cost \$100,000 are to identify the demographics of

those participating in gaming activities in North Dakota, where gaming is occurring in North Dakota, gaming activities residents of North Dakota are participating in which are outside North Dakota, and the impact gaming activities are having on individuals. The study, funded equally by the state and the tribes, is scheduled to be completed before the start of the 2001 Legislative Assembly.

BUDGET TOUR

While conducting a meeting in Bismarck, the committee conducted a budget tour of the West Central Human Service Center. On the tour, the committee heard of center needs and problems the entity 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 2001 Legislative Assembly.

BUDGET COMMITTEE ON INSTITUTIONAL SERVICES

The Budget Committee on Institutional Services was assigned six areas of responsibility. Section 31 of Senate Bill No. 2012 directed a study of the feasibility and desirability of collocating the Developmental Center and the State Hospital at one location and the feasibility and desirability of transferring additional buildings on the State Hospital grounds to the Department of Corrections and Rehabilitation. Senate Concurrent Resolution No. 4044 directed a study of the feasibility and desirability of consolidating under the School for the Blind all programs and services provided to children and adults who are blind or visually impaired. Section 22 of Senate Bill No. 2012 directed a study of residential treatment centers and residential child care facilities, including occupancy rates, the number of out-of-state residents, and the need for additional facilities.

Section 3 of Senate Bill No. 2168 provided that the Legislative Council receive reports from the Department of Human Services regarding grants awarded or loans approved for alternative nursing facility programs pursuant to provisions of this bill. Senate Bill No. 2038 provided that the Legislative Council receive reports from the Department of Human Services regarding the establishment of a traumatic brain-injured facility in western North Dakota. Section 2 of Senate Bill No. 2034 provided that the Department of Human Services present a final progress report to the Legislative Council by June 30, 2000, regarding the progress of the Alzheimer's and related dementia projects established under North Dakota Century Code (NDCC) Section 50-06-14.4. These responsibilities were assigned by the Legislative Council to the Budget Committee on Institutional Services.

Committee members were Representatives Merle Boucher (Chairman), LeRoy G. Bernstein, Jeff Delzer, Rod Froelich, William E. Gorder, Scot Kelsh, Joe Kroeber, Ralph Metcalf, and Chet Pollert and Senators David E. Nething, Harvey Sand, Wayne Stenehjem, and Harvey D. Tallackson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

COLLOCATING THE DEVELOPMENTAL CENTER AND STATE HOSPITAL

Section 31 of Senate Bill No. 2012 directed the Legislative Council to study the feasibility and desirability of collocating the Developmental Center and the State Hospital at one location and the feasibility and desirability of transferring additional buildings on the State Hospital grounds to the Department of Corrections and Rehabilitation.

Constitutional Provisions

Constitutional provisions that require the State Hospital to be located in Jamestown and the Developmental Center in Grafton include:

1. Article IX, Section 12, provides that certain public institutions of the state "are permanently located at the places hereinafter named" and further provides that a portion of the grant lands made available by an Act of Congress, "the Enabling Act," are to be allocated to these institutions. Two of the public institutions named are a "state hospital for the insane at the city of Jamestown, in the county of Stutsman" and "located at or near the city of Grafton, in the county of Walsh, an institution for the feeble-minded."
2. Article IX, Section 13, provides a grant of lands for a "state hospital for the mentally ill at such place within this state as shall be selected by the legislative assembly."

State Hospital Services and Funding

The State Hospital provides mental illness services, substance abuse and addiction services, and services to children with serious emotional disorders. The 1999-2001 appropriation for the State Hospital totals \$50.9 million, \$35.2 million of which is from the general fund. The committee received information regarding the number of staff by category, budget information by program, and operating costs per day. The committee learned the State Hospital is authorized 537.1 full-time equivalent (FTE) positions, and its 1999-2001 budget is based on an average patient population of 161. The schedule below presents the average daily population of the State Hospital in recent years:

Fiscal Year	Average Daily Population
1996	229
1997	223
1998	221
1999	179
2000	154

Developmental Center Services and Funding

The Developmental Center is a certified intermediate care facility for the mentally retarded. Its 1999-2001 appropriation totals \$39.2 million, \$9.4 million of which is from the general fund. The committee received information on the number of staff by category, budget information by program, and operating costs per day. The committee learned the Developmental Center is authorized 481.3 FTE positions, and its 1999-2001 biennium budget is based on an average population of 150.

The schedule below presents the average daily population of the Developmental Center in recent years:

Fiscal Year	Average Daily Population
1996	148
1997	150
1998	145
1999	140
2000	149

Major program areas of the Developmental Center include:

1. Day/residential - Provides training and assistance with daily living activities.
2. Health/clinical - Provides assessment therapy, training, and supportive services.
3. Administration - Provides leadership, training, support, resources, and maintenance of the center's programs and infrastructure.
4. Safety net - Provides specialized evaluation treatment or crisis management services.

Additional Uses of State Hospital Facilities by the Department of Corrections and Rehabilitation

The 1997 Legislative Assembly provided an appropriation of \$11.9 million, \$7.4 million of which was from the general fund, for the Department of Corrections and Rehabilitation to purchase and renovate three buildings on the State Hospital grounds for use as a 240-bed medium security prison and to operate the facility during the 1997-99 biennium. The Department of Corrections and Rehabilitation purchased three buildings--the extended treatment building, the forensics unit building, and the gymnasium building. The department renovated four of the six floors of the extended treatment building and the gymnasium building and began operating the James River Correctional Center on the State Hospital grounds in June 1998. The 1999 Legislative Assembly appropriated \$2,353,000 of special funds for renovating the fifth and sixth floors of the James River Correctional Center which will add capacity for another 110 inmates in the facility. The committee learned that because of delays in receiving the federal funds for the project, it will not be operational until June 2001 rather than November 2000 as originally projected.

The committee reviewed inmate populations and projected inmate populations as follows:

	Total Inmate Population	Inmates Housed Out of State
June 1997	770	0
June 1998	910	0
June 1999	932	0
May 2000	1,003	54
June 2001 estimate	1,078	107

The committee heard testimony from representatives of the Red River Regional Council expressing interest in opening a privately operated prison in Pembina County which would provide the Department of Corrections and Rehabilitation an alternative to housing its inmates out of state.

The committee learned the department plans to include approximately \$2 million in its 2001-03 biennium budget request to renovate the State Hospital's employee building, located east of the James River Correctional Center, for use as a women's unit. The building is only being partially used for housing of State Hospital employees.

The committee learned the department currently has unused beds on the women's unit floor at the James River Correctional Center. The unit's capacity is 80 medium security inmates; however, the department generally has only between 45 and 50 women in the unit. In addition, the department has approximately 20 to 25 minimum security women inmates at the Missouri River Correctional Center. The new facility would house up to 125 minimum and medium security women inmates now housed at the James River Correctional Center (medium security) and the Missouri River Correctional Center (minimum security).

The Department of Corrections and Rehabilitation identified the following other possible uses for State Hospital buildings:

1. The State Hospital day care building located west of the James River Correctional Center could potentially be used to house the James River Correctional Center administrative offices if the second and third floors are renovated.
2. Once the fifth and sixth floors of the James River Correctional Center are renovated and if a separate women's unit becomes operational, the department will need expanded food service and laundry facilities. The department could share or operate the food service and laundry facilities of the State Hospital.
3. The State Hospital's dairy barn could be used for storage for Roughrider Industries.

Benefits and Concerns of Collocation

The committee received testimony and reviewed the following potential benefits of collocating the State Hospital and the Developmental Center:

1. Administrative and support department costs may be reduced.
2. Professional and medical resources may be consolidated that could result in cost-savings and sharing of expertise.
3. The number of buildings to be maintained may be reduced and the existing physical plants could be better-utilized.
4. Improved efficiencies could be gained by no longer operating two separate facilities.
5. The central location of Jamestown could reduce travel.
6. The newer buildings at Grafton could reduce maintenance costs.
7. Both the Developmental Center and the State Hospital have buildings available for housing

patients; however, program space at either location is an issue and extensive remodeling would be required.

8. The vacated buildings at either Jamestown or Grafton could be used by other state agencies.
9. The Department of Corrections and Rehabilitation could expand its prison facilities at Jamestown if the State Hospital was collocated with the Developmental Center.

The committee received testimony and reviewed the following concerns and issues related to collocating the State Hospital and Developmental Center:

1. Remodeling or building at either location to meet the needs of the two diverse population groups would require substantial funding.
2. There are financial and morale issues associated with uprooting employees and their families to move to another location.
3. The reduction in force and the associated implications would need attention.
4. Economic issues for the city that loses its institution would need to be considered.
5. The constitution would need to be amended.
6. Advocates and families would have concerns regarding the mixing of the two populations.
7. The Developmental Center is already renting out space on its campus and planning for retirement housing.
8. Future prison expansion on the State Hospital campus would be limited.
9. There would be a potential impact on the accreditation status of both institutions. Housing in either city for an influx of employees may not be adequate.
10. State Hospital wards are arranged for short-term stays while the Developmental Center has home-like living units for long-term stays.
11. Recruitment of professional staff is a concern.
12. Perceptions associated with the location of three diverse populations at the Jamestown campus would require attention.

Estimated Costs of Collocation

The committee reviewed the estimated costs of collocating the State Hospital and Developmental Center. The committee learned that both campuses have space available to locate the residents of the other facility; however, the space at either site would need to be remodeled. The State Hospital has two buildings--No. 15 and No. 8--that could serve a population of 140 residents from the Developmental Center. The estimated cost of remodeling these two buildings is approximately \$7.2 million. The Developmental Center has three possible buildings (Prairie View, Pleasant View, and Midway) available to house the 165 patients from the State Hospital. The estimated remodeling cost for these buildings would total approximately \$8.1 million.

The committee reviewed the following schedules prepared by the Department of Human Services of the estimated fiscal effect of collocating the State Hospital at the Developmental Center in Grafton and the estimated fiscal effect of collocating the Developmental Center at the State Hospital in Jamestown:

Estimated Fiscal Effect of Collocating the State Hospital at the Developmental Center in Grafton	
Projected biennial general fund cost-savings (includes a reduction of 77.5 FTE positions)	\$8,150,797
Less increased general fund costs	
Maintenance of the facility in Jamestown	(2,732,177)
Reduction in State Hospital federal funds (State Hospital rates are based on costs divided by patient days; therefore, decreasing costs result in decreasing medical assistance revenue.)	(1,149,399)
Reduction in State Hospital other funds (State Hospital rates are based on costs divided by patient days; therefore, decreasing costs result in decreasing other insurance and private pay revenue.)	(1,326,206)
Reduction in Developmental Center federal funds (Title XIX nonallowed expenses allocated to State Hospital)	(1,078,575)
Reduction in Developmental Center other funds (loss of lease rental revenue)	(34,536)
Total net general fund savings per biennium	\$1,829,904

Estimated Fiscal Effect of Collocating the Developmental Center at the State Hospital in Jamestown	
Projected biennial general fund cost-savings (includes a reduction of 62 FTE positions)	\$6,527,052
Less increased general fund costs	
Maintenance of facility in Grafton	(2,274,235)
Reduction in Developmental Center federal funds (reduction in operating budget and loss of allowed depreciation)	(6,970,581)
Reduction in Developmental Center other funds (loss of charges for services revenue)	(531,836)
Reduction in State Hospital federal funds (Current support and administrative costs at the State Hospital would also be allocated to the Developmental Center patients resulting in a decrease in State Hospital rates and lower medical assistance revenue.)	(200,000)
Reduction in State Hospital other funds (Current support and administrative costs at the State Hospital would also be allocated to the Developmental Center patients resulting in a decrease in State Hospital rates and lower other insurance and private pay revenue.)	(175,000)
Total net general fund costs per biennium	(\$3,624,600)

The committee learned the estimated cost of constructing a new facility to house either the State Hospital or the Developmental Center would be \$9.6 million, based on a construction cost of \$120 per square foot.

Other States' Experiences

The committee received information on other states' experiences of collocating services for people with developmental disabilities and serious mental illnesses. The committee learned that in Georgia, a developmental disabilities facility with a population of 600 moved 100 of its residents into a mental health hospital located three miles away. In Illinois, a facility has both clients with developmental disabilities and mental health needs; however, the facility is reorganizing to provide services to individuals with developmental disabilities with one program team and individuals with mental health needs by another program team. Because people with developmental disabilities receive long-term services and people with mental health needs receive short-term services, it is necessary to have separate program teams.

The committee learned that in both Georgia and Illinois, the facilities' representatives agreed that combining administrative and ancillary services is beneficial; however, accreditation and staff concerns result when program services to these populations are combined.

State Hospital - Developmental Center Shared Services

The committee reviewed the possibilities of reducing total costs as a result of the State Hospital and Developmental Center sharing services as an alternative to collocation.

The following are potential areas for shared services identified by the committee:

1. Combining staff resources in the following areas:
 - a. Computer systems and personnel.
 - b. Human resources.
 - c. Business office.
 - d. Medical records.
 - e. Centralized purchasing.
 - f. Staff development and education.
 - g. Quality assurance.
 - h. Food service, laundry, and engineering.
 - i. Psychiatry and medical services.
 - j. Adaptive equipment programs.
 - k. General administration.
2. Combining the superintendent positions.
3. Contracting for services.
4. Training for staff.
5. Combining residential leader positions.
6. Combining support services leadership positions.
7. Transferring selected developmentally disabled clients currently receiving services at the State Hospital to the Developmental Center in order for these individuals to be eligible for federal funding at the Developmental Center. Services provided at the State Hospital are not eligible for medical assistance reimbursement and are paid for from the general fund.

The committee learned the institutions began sharing the following services during the 1999-2000 interim:

1. Superintendent's position - With the resignation of the Developmental Center superintendent during the interim, the Department of Human Services named the State Hospital superintendent as superintendent of both institutions.
2. Psychology contract.
3. Combined information systems department.
4. Joint strategic planning.

Other proposals for sharing and collaborating at the two institutions under consideration include:

1. Combining the two financial officer positions effective January 1, 2001, due to the retirement of one individual.
2. Hiring a support services director to oversee both institutions' engineering, maintenance, safety, and security functions by 2001.
3. Combining the two human resources departments by 2001.
4. Combining the program director of adult psychiatric services with the program director of substance abuse services to create an adult services department at the State Hospital (this will occur upon the retirement of the program director of adult psychiatric services).

The committee reviewed the estimated cost savings resulting from the shared services. The committee learned the changes already implemented have resulted in an estimated biennial savings of \$435,000, and the proposed changes will result in an additional \$500,000 of savings for a total savings of \$935,000 each biennium.

Sexual Offender Treatment Program

The committee reviewed the State Hospital sexual offender treatment program. The committee learned the program serves seven individuals and may serve up to 40 individuals in the future. The hospital has 11 beds available for this program. The cost of treatment for each patient is \$541 per day, and treatment services generally are necessary for 6 to 10 years.

The committee reviewed information on the status of the implementation of 1997 House Bill No. 1047 relating to the sexual offender treatment program. The committee learned the bill established a judicial procedure for committing sexually dangerous predators similar to the procedure used for committing a mentally ill individual to the State Hospital. The committee learned two of the seven individuals in the program may have been admitted as a result of a plea agreement. The committee learned the interim Judiciary Committee was conducting a study of the statutory provisions relating to sexual offender commitment procedures.

The committee expressed a concern regarding the possibility of individuals being admitted to the sexual offender treatment program as a result of a plea bargain agreement and stated that civil commitments to the

sexual offender treatment program at the State Hospital were not intended to be an alternative to criminal prosecution.

Conclusion

Although the committee does not make a specific recommendation regarding the collocation of the Developmental Center and the State Hospital, committee members expressed their support for the cooperation and collaboration that has occurred between the two institutions and the resulting cost-savings.

VISION SERVICES STUDY

Senate Concurrent Resolution No. 4044 directed the Legislative Council to study the feasibility and desirability of consolidating under the School for the Blind all programs and services provided to children and adults who are blind or visually impaired.

Available Vision Services

The committee reviewed information on vision services available in North Dakota. The committee learned an estimated 15,822 individuals in North Dakota have a moderate or severe visual impairment. Of this total, 9,609 are aged 55 or older, 5,946 are aged 16 through 54, and 267 are aged 21 and younger. Because the 0 through 21 and 16 through 54 age categories overlap, the North Dakota Census Data Center estimates that 11 persons with visual impairments may be shown in both categories.

The committee learned vision services are provided to persons with visual impairments by:

1. The School for the Blind.
2. The Department of Human Services - Vocational Rehabilitation Division.
3. The Department of Human Services - Infant development program.

4. The State Library.
5. School districts.
6. Independent living centers.

Vision-specific services are primarily provided by the School for the Blind and the Vocational Rehabilitation Division of the Department of Human Services. Services provided by the School for the Blind include family and adult services, outreach and in-home support services, technology and library services, skills training, summer camps, orientation and mobility training, and curriculum services. Services provided by Vocational Rehabilitation include medical evaluations, vocational evaluations, training and placement services, visual aids if necessary for work, reader services, telecommunications and other technological aids and devices, individual counseling, and other work-related support services.

The majority of the vision-specific services provided by the School for the Blind are provided to individuals who are blind or visually impaired between the ages of 0 and 21. The majority of vision-specific services provided by the Vocational Rehabilitation Division are provided to individuals who are blind or visually impaired aged 55 and over or visually impaired individuals aged 16 to 54 who are seeking employment.

The committee learned services are generally not available to persons between the ages of 21 and 54 who are blind or visually impaired and who are not seeking employment. The following schedule presents the numbers of individuals served by the School for the Blind and the Vocational Rehabilitation Division each year and the percentage of the total number of visually impaired individuals in the state who are being served. The schedule only reflects services provided to individuals who are moderately or severely visually impaired, and the agencies may provide additional services to individuals whose visual impairments are not as severe.

Age	Visually Impaired Persons Served By			Estimated Total Number of Visually Impaired Persons	Percentage Served
	School for the Blind	Vocational Rehabilitation Division	Total		
0-21	162	0	162	267	60.7%
16-54	98	181	279	5,946	4.7%
55 and over	7	695	702	9,609	7.3%
Total	267	876	1,143	15,822	7.2%

The following schedule reflects funding available for vision services at the School for the Blind and the

Vocational Rehabilitation Division for the 1999-2001 biennium:

School for the Blind		Department of Human Services - Vocational Rehabilitation Division - Vision Services	
Salaries and wages - 28 FTE	\$2,391,456	Salaries and wages - 10 FTE	\$723,498
Operating expenses	678,059	Operating expenses	210,961
Equipment	70,500	Equipment	7,925
Capital improvements	51,790	Capital improvements	830
		Grants	155,407
Total all funds	\$3,191,805	Total all funds	\$1,098,621
Less estimated income	1,002,577	Less estimated income	868,004
Total general fund appropriation	\$2,189,228	Total general fund appropriation	\$230,617

Other available vision services include:

- The State Library provides books on tape, large print books, and the Dakota Radio Information Service. The talking book program is available across the state and serves approximately 2,400 individuals. The Dakota Radio Information Service broadcasts live daily programs that provide information read from local newspapers to 570 listeners.
- School districts provide vision services through special education units for visually impaired students attending public schools.
- The Department of Human Services infant development program provides early intervention services for children with disabilities from birth through age 2, including vision-related disabilities. Services available include in-home assistance, parent training, occupational therapy, physical therapy, and speech therapy.
- Independent living centers provide services to individuals with disabilities, including vision-related disabilities. Core services of independent living centers include independent living skills training, peer counseling, information and referral, self-advocacy, and systems advocacy.

Barriers to Services

Based on information provided by state agencies, private providers, other organizations, and consumers, the committee learned the following items may restrict individuals with visual impairments from accessing services:

1. Lack of health insurance coverage for vision rehabilitation services.
2. Fiscal disincentives for visually impaired individuals who seek and obtain employment.
3. Lack of awareness of the availability of vision services.
4. Lack of funding to provide additional needed services.
5. Time delays in determining an individual's eligibility for services.
6. Requirement that individuals be seeking employment in order to access services under the vocational rehabilitation employment program.
7. Difficulties in reactivating cases that may have been closed.
8. Travel required to access certain services.
9. Fees required to access certain services.
10. Eligibility requirements associated with the level of vision loss needed to access services.
11. Fragmentation of services for adults because two agencies are involved in providing vision services.
12. Confusion regarding the appropriate service provider to contact.

13. Denial of the need for services or lack of confidence regarding the ability to learn necessary changes.

Committee Considerations

Based on the committee's review of vision services available in the state, the number of individuals accessing the services and input from interested agencies, organizations, and individuals, the committee considered alternative bill drafts providing the following four options for improving the delivery and administration of vision services in North Dakota:

1. Consolidating all vision services under the School for the Blind.
2. Consolidating all vision services under the Department of Human Services.
3. Consolidating all vision services under a separate agency with its own governing board.
4. Continuing the current administrative structure of the School for the Blind and the Vocational Rehabilitation Division vision services program but clarifying that the School for the Blind is responsible for serving persons of all ages with visual impairments.

The committee received testimony regarding the various options for administering and delivering vision services in the state from representatives of state agencies, private providers, other organizations, and consumers that suggested:

1. Improving the access and availability of vision services.
2. Improving public awareness of the vision services available.
3. Expanding partnerships and improving cooperation and collaboration among vision service providers.
4. Coordinating vision services.
5. Establishing an independent board with members who are blind or visually impaired to oversee the provision of vision services.
6. Receiving more home or community-based services rather than center or institution-based services.
7. Establishing peer counseling programs and expanding support groups.
8. Providing vision services by vision specialists rather than general vocational rehabilitation counselors.
9. Expanding the use of the independent living centers to serve additional persons who are blind or visually impaired.
10. Continuing to allow the teachers at the School for the Blind to provide assistance to teachers in local school districts across the state.
11. Consolidating all vision services under the School for the Blind. This option:

- a. May result in a concentration of staff in one-quarter of the state that may cause service coordination problems.
 - b. Could cause a disruption in services for the elderly population during the transition period.
 - c. Would improve the accountability for the vision services being provided.
 - d. Would enable all vision services to be provided by vision specialists rather than general vocational rehabilitation counselors.
 - e. Would make the majority of individuals who are blind or visually impaired feel more comfortable with the School for the Blind remaining under the administrative structure of the Department of Public Instruction.
 - f. Would create difficulties in serving persons with multiple disabilities.
12. Consolidating all vision services under the Department of Human Services. This option:
- a. May require a constitutional change.
 - b. Would emphasize regional service delivery through the human service centers.
 - c. Could cause a disruption in services for children during the transition period.
 - d. Would expand the use of independent living centers.
 - e. Would provide opportunities for better communications with other community services.
13. Consolidating all vision services under a separate vision services agency. This option:
- a. Would result in more efficient and cost-effective services.
 - b. Would improve the accountability for the vision services being provided.
 - c. May require a constitutional change.
 - d. May lead to the creation of additional state agencies to serve other specific disability groups.
 - e. Could cause a disruption in services during the transition period.
 - f. Would create difficulties in serving persons with multiple disabilities.
 - g. Would result in duplicative reporting to comply with federal vocational rehabilitation funding requirements.
 - h. Would enable all vision services to be provided by vision specialists rather than general vocational rehabilitation counselors.
 - i. Would improve communications.
14. Continuing the current administrative structure but enhancing service delivery. This option:
- a. May result in an expansion of School for the Blind outreach services.
 - b. Would not result in service disruption.
 - c. Could improve the coordination of services.
 - d. Would enable the School for the Blind to serve as a "case management" agency for persons who are blind or visually impaired.
 - e. May continue the confusion by consumers regarding the appropriate agency to contact for services.
 - f. Will allow for continuation of the separate service agencies that complement each other.
 - g. Would make the majority of individuals who are blind or visually impaired feel more comfortable with the School for the Blind remaining under the administrative structure of the Department of Public Instruction.
 - h. Allows the School for the Blind to fulfill its appropriate role as facilitator and collaborator of agencies and organizations involved in providing vision services.

Committee Recommendation

The committee recommends House Bill No. 1038 to continue the current administrative structure of the School for the Blind and the Vocational Rehabilitation Division's vision services program but clarify that the School for the Blind is responsible for serving persons of all ages with visual impairments not just children. The bill changes the name of the school to North Dakota Vision Services - School for the Blind. It removes outdated statutory provisions relating to educating students in general education subjects who cannot receive an appropriate education in the public schools. It also clarifies that the School for the Blind is a state-wide service, resource, and referral center for all residents of this state who are blind or have a visual impairment. The School for the Blind would be responsible for:

1. Collecting and distributing information on vision services programs available in the state (a new responsibility).
2. Facilitating collaboration with agencies and programs providing services to individuals who are blind or have a visual impairment (a new responsibility).
3. Assisting residents to access appropriate vision services (a new responsibility).
4. Maintaining a data base of blind or visually impaired persons in the state (a new responsibility).
5. Providing vision services, including vision-specific consultations, evaluations, information, training, and loans of adaptive devices, equipment, and materials.

The committee learned the estimated cost of the provisions of this bill for the 2001-03 biennium is \$149,667 of special funds available from revenues generated by the school, and that two additional FTE

positions will need to be located in western North Dakota to provide technology-related services.

RESIDENTIAL TREATMENT CENTERS AND RESIDENTIAL CHILD CARE FACILITIES STUDY

Section 22 of Senate Bill No. 2012 directed the Legislative Council to study residential treatment centers and residential child care facilities, including occupancy rates, the number of out-of-state residents, and the need for additional facilities.

Moratorium on the Expansion of Beds

Sections 8 and 11 of 1999 Senate Bill No. 2012, provide that the department may not issue a license for any additional bed capacity for a residential treatment center or residential child care facility above the state's gross number of beds licensed as of June 30, 1999, which was 320 excluding group home beds that were not a part of the moratorium. The following schedule shows the residential child care facilities and residential treatment centers licensed by the department in June 1999 and the number of licensed bed capacity for each facility:

Facility	Location	Number of Licensed Beds
Group Homes		
Charles Hall Youth Services	Bismarck	24
Eckert Youth Homes	Williston	16
Harmony House	Devils Lake	7
Lake Oahe Group Home	Fort Yates	8
New Outlooks	Devils Lake	10
Total group home beds		65
Residential Child Care Facilities		
Home on the Range	Sentinel Butte	79
Red River Victory Ranch	Fargo	12
Dakota Boys Ranch	Minot	39
Dakota Boys Ranch	Fargo	10
Dakota Boys Ranch - Transitional living	Minot	12
Prairie Learning Center	Raleigh	50
Southwest Key	Mandan	24
Total residential child care facility beds		226
Residential Treatment Centers		
Southwest Key	Mandan	16
Ruth Meiers Adolescent Center	Grand Forks	12
Dakota Boys Ranch	Minot	16
Luther Hall	Fargo	16
Manchester House	Bismarck	10
Total residential treatment center beds		70
Accredited Residential Treatment Centers		
Eight Rivers	Jamestown	8
Rivers Edge	Fargo	16
Total accredited residential treatment center beds		24
Total beds		385

The committee learned that in early 2000, the Southwest Key Program at Mandan ceased operations of its 16-bed residential treatment center and 24-bed residential child care facility. Of the 38 youth residing in the facility when it closed, four returned home, four were placed out of state, and 30 were placed in other facilities in North Dakota. The committee learned the reason cited by Southwest Key for closing was a lack of adequate funding. The committee learned Housing, Industry, and Training (HIT), Inc., and the Dakota Boys Ranch began operating an eight-bed residential treatment center facility in Mandan to meet the needs of lower-functioning children.

Types of Foster Care Placements

The types of foster care placements are:

1. Foster care family - A family providing for the child's care. Children placed with a foster care family are generally younger and have been deprived, neglected, or abused.
2. Therapeutic foster care family - A family providing for the child's care. Children placed with a therapeutic foster care family generally have been diagnosed with a psychiatric disorder and may have previously been placed in a residential treatment center.
3. Group homes - Children placed in these types of facilities are generally adolescents who have been deprived or abused, involved in a parent-child conflict, or have character disorders. A group home serves from 4 to 10 children.
4. Residential child care facilities - Children placed in these types of facilities are generally adolescents who have been deprived or abused, involved in a parent-child conflict, or have character disorders. A residential child care facility serves more than eight children.
5. Residential treatment centers - Children placed in these types of facilities are generally adolescents who have been diagnosed with psychiatric disorders.

Foster Care Placements and Costs

The following schedules present foster care placements and costs in recent years:

Fiscal Year	Number of Children Placed in Family Homes (Unduplicated)	Number of Children Placed in Facilities (Unduplicated)	Total Foster Care Placements	Number of Children Placed Out of State (Unduplicated) ¹	Percentage of Foster Care Children Placed Out of State
1991	883	388	1,271	32	2.5%
1992	946	385	1,331	33	2.5%
1993	1,065	448	1,513	48	3.2%
1994	1,064	492	1,556	61	3.9%
1995	1,125	529	1,654	70	4.2%
1996	1,128	535	1,663	67	4.0%
1997	1,162	559	1,721	85	4.9%
1998	1,121	607	1,728	63	3.6%
1999	1,116	600	1,716	93	5.4%
2000	1,188 ²	688	1,876 ²	86 ³	4.6%

¹ Because children placed out of state may be placed in either a family home or a facility, these numbers are also reflected in the columns titled "Number of Children Placed in Family Homes" and "Number of Children Placed in Facilities" on this schedule.

² Although the Department of Human Services is unsure of the type of placement of 42 children due to a computer system change, these children are reflected as a family home placement for purposes of this schedule.

³ Federal fiscal year 2000.

Foster Care - Out of State				
Fiscal Year	Average Number of Children Per Month	Average Cost Per Month	Unduplicated Number of Children	Annual Cost
1991	12	\$33,523	32	\$402,276
1992	14	\$24,447	33	\$293,359
1993	26	\$47,338	48	\$520,713
1994	29	\$50,241	61	\$602,888
1995	34	\$92,081	70	\$1,104,974
1996	37	\$147,319	67	\$1,767,828
1997	51	\$173,579	85	\$2,082,950
1998	44	\$162,211	63	\$1,946,528
1999	31	\$89,777	93	\$1,077,329
2000 ¹	38	\$95,110	86	\$1,141,317

¹ Federal fiscal year 2000.

The committee reviewed rates changes for children placed in foster care facilities and learned that in-state rates vary from \$81 to \$260 per day while out-of-state rates vary from \$69 to \$258 per day.

The committee learned that based on information for 34 children returned from out-of-state placements in the last two years, the average length of stay for children in an out-of-state placement was 389 days while the

average length of stay for children placed in North Dakota facilities varies from 4 to 12 months.

Foster Care Funding

The following schedule presents the Department of Human Services estimate of foster care costs for the 1999-2001 biennium:

1999-2001 Estimated Foster Care Costs				
	General Fund	Federal Funds (IV-E and TANF)	Other Funds	Total
Room and Board				
Family foster care homes	\$1,117,181	\$5,342,835	\$952,663	\$7,412,679
Therapeutic foster care homes - Room and board amounts reflected under family foster care homes				
Residential child care facilities	4,643,287	12,472,809	6,613,535	23,729,631
Total room and board	\$5,760,468	\$17,815,644	\$7,566,198	\$31,142,310
Treatment and Service Payments				
Family foster care homes - Not applicable				
Therapeutic foster care homes	\$1,638,346	\$4,447,025	\$247,209	\$6,332,580
Residential child care facilities	534,156	1,442,650	80,594	2,057,400
Residential treatment centers (includes room and board)	1,606,278	3,793,722		5,400,000
Total treatment services	\$3,778,780	\$9,683,397	\$327,803	\$13,789,980
Other Services				
Shelter care	\$155,687			\$155,687
Independent living	153,918	\$471,699		625,617
Transportation	18,500	81,500	\$33,333	133,333

	General Fund	Federal Funds (IV-E and TANF)	Other Funds	Total
Serious emotional disorder (SED) - Out-of-home care	178,083	212,154	58,430	448,667
Tribal therapeutic	140,364	332,322		472,686
Turtle Mountain Professional Association of Treatment Homes (PATH)		83,080	35,091	118,171
Total other services	\$646,552	\$1,180,755	\$126,854	\$1,954,161
Administration and Training				
Foster care - Administration	\$141,864	\$148,266	\$3,834	\$293,964
Foster care - Training	527,286	1,255,250		1,782,536
Total administration and training	\$669,150	\$1,403,516	\$3,834	\$2,076,500
Total Department of Human Services foster care-related expenses	\$10,854,950	\$30,083,312	\$8,024,689	\$48,962,951

The committee learned North Dakota foster care facilities are not reimbursed for the full cost of providing services to these children, and as a result are required to raise approximately 33 percent of their funding needs from private sources. The primary funding concern for foster care facilities is that the state's service rate reimbursement is capped at \$300 per month per child. This payment provides reimbursement for approximately one-half the actual costs of providing services to these children at the foster care facilities.

Review of Foster Care Services and Needs

The committee reviewed the results of a Legislative Council staff survey of residential treatment centers and residential child care facilities regarding the types of services provided, occupancy rates, the number of out-of-state residents served, placement requests, and the need for additional foster care facilities. North Dakota facilities had available 385 licensed foster care facility beds in fiscal year 1999, and served an average of 355 children, which is a 92.2 percent occupancy rate. Approximately 17 of the 355 children, or five percent, were from out of state.

Seven of the 14 facilities responding to the survey indicated a need for more facilities, five facilities said there is not a need for more facilities, and two either did not respond or were unsure. The facilities identified a need for the following types of services:

1. Residential treatment, including treatment for children with low IQs, for lower functioning children who need addiction counseling, for chemically addicted children, for sexually reactive children and for children under 14 years of age, and for children who have serious emotional disorders and who are mentally retarded.
2. Residential child care for extremely violent children.
3. Group home beds, including beds in the Fargo area, beds for children with autism who require residential support, and beds for school-age children with developmental disabilities.
4. Therapeutic foster care homes.
5. Family foster care.

The committee learned the children who are in need of services in North Dakota include children with a low IQ and either a mental health need or a history of sexually offending others, children who have committed serious sexual offenses, and children who abuse inhalants. These children require specific and unique treatment services and as a result it would be very difficult to accommodate these children in a single new facility.

The committee reviewed major differences between North Dakota and Minnesota facilities that include:

1. Minnesota facilities accept children with lower IQs than North Dakota facilities.
2. North Dakota facilities' daily costs are significantly less than the costs of Minnesota facilities.
3. Minnesota facilities accept younger children than North Dakota facilities.

The Department of Human Services estimates the current number of group home, residential child care facility, and residential treatment center beds to be adequate; however, an increase in the number of therapeutic foster care beds is necessary.

The committee learned a number of public and private agencies in the Grand Forks region are interested in beginning a 30- to 90-day evaluation service program to more formally evaluate the level of care needed for a child entering the foster care system in the northeast region.

The committee received testimony from representatives of the Professional Association of Treatment Homes (PATH) that serves children who have serious emotional or behavioral disorders. The purpose of the organization's programs is to develop services that provide families the support needed to maintain a safe, therapeutic, family environment for children with serious emotional disorders to minimize the child's need for out-of-home care or psychiatric hospitalization. Funding for PATH is provided primarily from state, federal, and private insurance sources.

The committee learned the Department of Human Services supports the continuation of the moratorium on residential child care facility and residential treatment center beds for the 2001-03 biennium. If the moratorium is continued, the department suggests a change that

would allow the department to allocate closed beds based on the childrens' population, treatment, and geographic needs and for the use of a request for proposal. This would ensure residential beds are targeted to areas of need.

Conclusion

The committee makes no recommendation regarding continuing the moratorium on the licensing of additional residential child care facility or residential treatment center bed capacity set to expire on June 30, 2001.

NURSING FACILITY GRANT OR LOAN FUND ANNUAL REPORTS

Section 3 of Senate Bill No. 2168 provides that the Department of Human Services provide reports to the Governor and the Legislative Council on or before August 31 of each year concerning grants awarded or loans approved for alternative nursing facility programs pursuant to provisions of that bill.

The committee received status reports from the Department of Human Services on the intergovernmental transfer program and on the status of nursing facility alternative grants and loans at each of its meetings.

Source of Funds - Government Nursing Facility Funding Pool Payments

Moneys (federal funds) are generated for the health care trust fund as a result of the Department of Human Services making government nursing facility funding pool payments to two government nursing facilities in the state in McVille and Dunseith. These payments are made based on the average amount Medicare rates exceed Medicaid rates for all nursing care facilities in the state multiplied by the total of all Medicaid resident days of all nursing homes. Federal Medicaid funds are available for these payments and require a state match either from the general fund or a Bank of North Dakota loan for any additional federal funds that become available. Payments are made to the two government nursing facilities and are subsequently returned to the state, less a \$10,000 transaction fee retained by each of the two government nursing facilities. Once returned to the state, the state's matching share is returned to either the general fund or used to repay the Bank of North Dakota loan, as appropriate, and the federal funds are deposited in the health care trust fund. Interest earned is retained in the fund.

Health Care Trust Fund Uses

The moneys in the health care trust fund can be used for nursing alternative loans or grants as determined by the Department of Human Services. The Department of Human Services may transfer funds to either a nursing facility alternative loan fund or a nursing facility

alternative grant fund. Loans or grants are for capital or one-time expenditures to assist a nursing facility in converting to an alternative care facility. The Bank of North Dakota administers the loan program, and interest rates are two percent below market with a maximum rate of seven percent. The department's share of a project's cost is limited to \$1 million or 80 percent of the project cost, whichever is less.

1999-2001 Appropriations

Senate Bill No. 2168 appropriated \$12.4 million for the 1999-2001 biennium, \$3.6 million from the general fund and \$8.8 million of federal funds, for making government nursing facility funding pool payments. Once payments are made and returned to the Department of Human Services, the general fund is repaid and the balance is deposited in the health care trust fund. The bill provided that if additional amounts in excess of the \$12.4 million become available, the Department of Human Services may increase the funding pool payments subject to Emergency Commission and Budget Section approval. The bill also provided that the additional state matching funds be made available from a Bank of North Dakota loan.

Of the amounts deposited in the health care trust fund, the bill appropriated \$4,262,410 for the service payments for elderly and disabled (SPED) program and \$4,262,410 for nursing facility alternative loans or grants. The section provided that if amounts in excess of \$8.7 million become available in the fund during the biennium, the Department of Human Services may increase the appropriation amount, subject to Emergency Commission and Budget Section approval. As discussed in the following section, the state received a total of \$43.2 million that was deposited in the health care trust fund.

Health Care Trust Fund Deposits

First-Year Payments

The committee learned in April 2000 the Department of Human Services made its government nursing facility funding pool payments for the first year of the 1999-2001 biennium of \$36.8 million, \$24.4 million more than appropriated for both years of the 1999-2001 biennium. The state matching share on this amount was \$10.9 million, \$7.3 million more than the \$3.6 million appropriated. The Department of Human Services received Emergency Commission and Budget Section approval in March 2000 to access the additional \$17.4 million of federal funds available and to obtain the additional \$7.3 million of state matching funds needed from a Bank of North Dakota loan.

After deducting the government nursing facility transaction fees of \$10,000 each and after returning the \$10.9 million of state matching funds, \$25.9 million was deposited in the health care trust fund. However, the committee learned the federal Health Care Financing

Administration has questioned North Dakota's method of calculating its first-year payment and indicated North Dakota received \$13 million more than it was entitled to under its plan. The department believes it calculated the amount correctly and will be appealing the administration's decision.

Second-Year Payments

The committee learned the department made its government nursing facility funding pool payments for the second year of the 1999-2001 biennium of \$24.7 million in September 2000. The state matching funds share on this amount was \$7.3 million. The department received Emergency Commission and Budget Section approval in August 2000 to access the

additional \$17.4 million of federal funds available and to obtain the additional \$7.3 million of state matching funds needed from a Bank of North Dakota loan. After deducting the government nursing facility transaction fees of \$10,000 each retained by the Dunseith and McVile nursing homes and repaying the \$7.3 million Bank of North Dakota loan for the state's matching funds share, the department deposited \$17.3 million in the health care trust fund.

Funding Summary

The following is a summary of the funding received under the intergovernmental transfer program for the 1999-2001 biennium:

	Original Projections 1999-2001 Appropriation	First Year 1999-2000	Second Year 2000-01	Total 1999-2001	Total Increase (Decrease)
Government nursing facility funding pool payments					
Federal funds	\$8,564,819 ¹	\$25,922,739	\$17,360,685	\$43,283,424	\$34,718,605
State matching funds	3,618,391	10,888,876	7,292,375	18,181,251	14,562,860
Total	\$12,183,210 ¹	\$36,811,615	\$24,653,060	\$61,464,675	\$49,281,465
Health care trust fund	\$8,524,820	\$25,902,739 ^{2,4}	\$17,340,685 ³	\$43,243,424 ⁴	\$34,718,604 ⁵

¹ This amount reflects the \$12.4 million appropriation in Section 4 of Senate Bill No. 2168, net of \$226,238 of department administrative costs.

² This amount is less than the government nursing facility funding pool federal funds amount as a result of the \$20,000 that is retained by the two government nursing facilities (Dunseith and McVile) prior to the funds being deposited in the health care trust fund.

³ This amount is less than the government nursing facility funding pool federal funds amount as a result of the \$20,000 that is retained by the two government nursing facilities (Dunseith and McVile) prior to the funds being deposited in the health care trust fund.

⁴ This amount may be reduced by \$13 million depending on the outcome of the Department of Human Services appeal of the federal Health Care Financing Administration decision to deny \$13 million of North Dakota's first-year government nursing facility funding pool payment.

In addition, on August 31, 2000, the Health Care Financing Administration informed the Department of Human Services it did not agree with the method used by the department to calculate North Dakota's first-year payment. The Health Care Financing Administration has indicated that North Dakota claimed \$13 million more than its plan allowed. The department, however, believes its claim was in accordance with its approved plan. The department intends to appeal the Health Care Financing Administration decision.

⁵ The department received Emergency Commission and Budget Section approval in June 2000 to increase spending authority from the health care trust fund by \$2,218,429 for providing additional grants and loans under provisions of Senate Bill No. 2168.

Grants and Loans

Senate Bill No. 2168 (1999) appropriated \$4,262,410 for nursing facility grants and loans. The committee learned in June 2000 the department received Emergency Commission and Budget Section approval for an additional \$2,218,429 of spending authority from the health care trust fund for nursing facility grants and loans. As a result, the amount available for grants and loans for 1999-2001, as adjusted, totals \$6,480,839. The department's first loan and grant application period ended in February 2000 with 56 applications for grants and loans. Through July 2000 the department awarded \$1,283,504 in loans and grants for 23 projects and anticipates awarding an additional \$2.4 million for three projects. In addition, eight entities were proceeding with the application process with requests for grants and loans that total \$5.7 million. The committee learned the department provided grant funds for projects that also received loans to reduce the effective interest rate from

seven percent to four percent in order to make the projects feasible.

The department also plans to use moneys in the health care trust fund for conducting a statewide study of long-term care needs prior to the 2001 legislative session.

Health Care Trust Fund Analysis

The following schedule shows the estimated revenues and expenses of the health care trust fund for the 1999-2001 biennium:

Balance July 1, 1999		\$0
Estimated revenues		
Government nursing facility funding pool payments		
First year	\$25,902,739	
Second year	17,340,685	
Investment income	2,049,561	
Total estimated revenue		\$45,292,985
Total available		\$45,292,985
Estimated expenditures		
1999 Senate Bill No. 2168 - Department of Human Services		
Service payments for elderly and disabled (SPED)	\$4,262,410	
Nursing facility alternative grants and loans	6,480,839 ¹	
Administrative costs	226,238	
Total estimated expenditures		\$10,969,487
Estimated balance - June 30, 2001		\$34,323,498 ²

¹ This amount includes the \$4,262,410 appropriated specifically in 1999 Senate Bill No. 2168 and \$2,218,429 of additional spending authority approved by the Emergency Commission and Budget Section in June 2000.

² This amount may be reduced by \$13 million depending on the outcome of the Department of Human Services appeal of the federal Health Care Financing Administration decision to deny \$13 million of North Dakota's first-year government nursing facility funding pool payment.

In addition, on August 31, 2000, the Health Care Financing Administration informed the Department of Human Services it did not agree with the method used by the department to calculate North Dakota's first-year payment. The Health Care Financing Administration has indicated that North Dakota claimed \$13 million more than its plan allowed. The department, however, believes its claim was in accordance with its approved plan. The department intends to appeal the Health Care Financing Administration decision.

Committee Considerations

Because Senate Bill No. 2168 is effective only for the 1999-2001 biennium, the committee considered possible action that the 2001 Legislative Assembly may need to take to address the continuation of this intergovernmental transfer program and the nursing facility alternative grant and alternative loan programs. The committee learned that if funds are remaining in the health care trust fund at the close of the 1999-2001 biennium, the 2001 Legislative Assembly will need to address the use of those funds and any additional funds that become available if the intergovernmental transfer program continues. The projected funding available may be reduced by \$13 million depending on the outcome of the Health Care Financing Administration's denial of \$13 million of North Dakota's first-year payment. The federal government does not currently place any restrictions on the use of these funds by the state; however, the Health Care Financing Administration informed state Medicaid directors in a July 2000 letter that the administration will be considering changes to regulations that

may limit states' access to these federal funds through the intergovernmental transfer program.

Proposed Federal Rule Changes

On October 6, 2000, the Health Care Financing Administration published proposed changes to regulations affecting this program. The proposed changes would allow North Dakota to continue accessing these funds for five more years (until state fiscal year 2006). The first two years could be at the same level as the current program, but for the final three years, the state would need to reduce its funding claimed by 25 percent each year.

Committee Conclusion

The committee took no action relating to this responsibility because an ad hoc committee made up of legislators and representatives of the Department of Human Services, Long-Term Care Association, and the communities of Dunseith and McVille are planning to introduce a bill to the next Legislative Assembly providing for the continuation of the program.

In response to learning of the Health Care Financing Administration's claim that North Dakota improperly calculated its first-year government nursing facility funding pool payment, the committee expressed its support for the method used by the department for calculating the first-year government nursing facility funding pool payment, and asked that if necessary, the committee chairman work with the Legislative Council chairman to draft a letter to the secretary of the federal Department of Health and Human Services, the Health Care Financing Administrative director, and North Dakota's Congressional Delegation expressing this support. As of October 18, 2000, the Department of Human Services had not received written notification of the Health Care Financing Administration's denial of \$13 million of North Dakota's first-year payment, and as a result, no formal response by the department has been made.

TRAUMATIC BRAIN-INJURED FACILITY REPORTS

Senate Bill No. 2038 directed the Legislative Council to receive reports from the Department of Human Services regarding the establishment of a traumatic brain-injured (TBI) facility in western North Dakota.

Current Facility

The committee learned that as of June 1999, the state's only facility for traumatic brain-injured individuals was the High Soaring Eagle Ranch near Valley City. This facility provides services for up to 11 individuals.

The committee learned because of the moratorium on the expansion of basic care bed capacity, the beds necessary to establish a TBI facility in western North Dakota must become available from existing basic care

bed capacities. Beds will become available on a one-for-two basis when any basic care facility reduces its beds. For example, if a basic care facility were to reduce its licensed capacity by 10 beds, five of those could be available for use in a TBI facility in western North Dakota.

Survey Information

The committee learned HIT, Inc., of Mandan was interested in establishing a TBI facility in western North Dakota. HIT, Inc., conducted a survey of all basic care facilities to determine if any beds were available for transfer. Of the 29 survey respondents only one facility indicated a potential reduction of just one bed. HIT, Inc., also conducted a survey in southwestern North Dakota to identify the number of individuals with a traumatic brain injury diagnosis. The survey identified 64 individuals in the southwestern part of the state with this diagnosis--36 in Burleigh County, 18 in Morton County, eight in Stark County, and one each in Hettinger and Slope Counties.

Pilot Project

The committee learned that HIT, Inc., could proceed with the establishment of a TBI facility without obtaining the transfer of basic care beds because the State Health Council in 1998 approved HIT, Inc., as an alternative health care services pilot project under NDCC Section 23-01-04.3. The section provides that the State Health Council may approve no more than three separate projects that would be operating at the same time, and no project may continue for more than five years. During the 1999-2001 biennium, only one project, the HIT, Inc., TBI facility project, was approved by the State Health Council.

New Traumatic Brain-Injured Facility

The committee learned HIT, Inc., began construction of its 10-bed TBI facility named Dakota Pointe at 3404 43rd Street Northwest, Mandan, in June 2000, and the facility was to be completed by October 2000. The Department of Human Services approved grants and loans for the facility from the nursing facility alternative grant fund and alternative loan fund totaling \$360,114. Of the total, the department approved grants of \$21,606 for facility startup costs, \$1,771 for the estimated first-year operating loss, \$55,018 to reduce the effective interest rate on the construction loan approved from 5.78 percent to four percent, and a loan of \$281,719.

The committee learned the HIT, Inc., TBI facility is being constructed to meet basic care licensing requirements. If basic care licensing remains unchanged and the moratorium is eliminated, the facility will need to apply for licensure after the moratorium is lifted. If the moratorium remains, the facility will need an exception to be provided by the Legislative Assembly if it is to

continue providing services after the pilot project ends in 2003.

The committee learned the Department of Human Services does not anticipate spending the contingent appropriation of \$200,000, of which \$60,000 is from the general fund, contained in Section 35 of Senate Bill No. 2012, for the traumatic brain-injured facility because based on current Medicaid expenditure patterns, the department should have adequate funds within its 1999-2001 Medicaid appropriation to cover the additional costs associated with this facility.

The committee learned based on the current TBI service needs in the state, the institutional care provided by Dakota Pointe and the High Soaring Eagle Ranch near Valley City should be adequate to meet the service needs of individuals with a traumatic brain injury.

Developmental Center Traumatic Brain-Injured Unit

The committee received information on the TBI unit at the Developmental Center. The committee learned the TBI facility at the Developmental Center began operating in July 1999 with the admission of three individuals. The program admitted its fourth client on March 1, 2000. The program is designed to be a "safety net" for individuals who have suffered a brain injury for which there is no other appropriate placement available in North Dakota. The cost per individual receiving services in the TBI unit is approximately \$450 per day. The committee reviewed daily rates charged at similar TBI facilities in other states and while it is difficult to compare services between the various facilities, other states' daily rates range from \$233 to \$525 per day.

The committee learned the program has 12 certified beds for the program and employs 10 staff to serve the four individuals. The 1999-2001 appropriation for the program is \$575,000 of other funds and the Developmental Center projects that costs will total approximately \$600,000 for this biennium. The funding is being provided from federal funds and the general fund.

Committee Conclusion

The committee makes no recommendation regarding the TBI facility reports it received.

ALZHEIMER'S AND RELATED DEMENTIA PROJECTS REPORT

Section 2 of Senate Bill No. 2034 directed the Legislative Council to receive a final report from the Department of Human Services on the progress of the Alzheimer's and related dementia projects.

1997-98 Interim

The 1997 Legislative Assembly directed the Department of Human Services to establish pilot projects for Alzheimer's and related dementia populations in order to explore the financial and service viability of converting

existing long-term care facility bed capacity to a specific service environment targeting the Alzheimer's and related dementia populations. During the 1997-98 interim, the department established a 14-bed pilot project with the Baptist Home of Kenmare. For 1998 the cost per day of the pilot project was \$79.37, which was \$6.04 per day less than the average nursing facility cost of \$85.41 per day.

1999-2000 Activity

The committee learned that of the estimated 6,400 individuals occupying nursing facility beds in North Dakota, approximately 3,400 have an indication of Alzheimer's or other related dementia.

Senate Bill No. 2034 (1999) repeals, on July 1, 2001, NDCC Section 50-06-14.4, which authorizes the Alzheimer's and related dementia projects. In addition, 1999 Senate Bill No. 2036 directed the State Department of Health and the Department of Human Services to review and make recommendations regarding the licensure for basic care and assisted-living facilities. The committee learned facilities currently operating as pilot projects should qualify for licensure under the new requirements that will be recommended by these departments, which the Legislative Assembly will consider during the next session. If no changes are made to the current licensing requirements, the facilities will likely need to be licensed as basic care facilities. The committee learned the department believes the pilot projects can be discontinued at the time the new licensing standards become effective or at the end of the current biennium if no new standards are adopted and the facilities seek to be licensed as basic care facilities. If licensing standards are not changed, the department recommends these facilities be allowed to seek basic care licensing even if a moratorium on basic care beds continues in the next biennium.

Final Progress Report

The committee received the final progress report relating to the Alzheimer's and related dementia projects. The committee learned based on the department's review of the Baptist Home in Kenmare and with the approval of three additional units, the Alzheimer's and related dementia pilot project has accomplished the goals set forth in the original legislation. The report

indicated the facility in Kenmare provided appropriate and adequate care to its residents with Alzheimer's and related dementia. The current payment rate for Medicaid recipients is \$67.26 per day and the room and board rate is \$12.10 per day. The total cost to a Medicaid recipient eligible for the home and community-based waiver is \$79.36 per day, or \$15.05 per day less than services of a similar nature in a nursing facility of \$94.41 per day. The department submitted its final progress report to the Legislative Council on June 29, 2000.

The three additional pilot projects approved by the department are:

1. Edgewood Vista in Bismarck converted 14 existing basic care beds to an Alzheimer's and related dementia unit that began operations in March 2000.
2. Edgewood Vista in Minot converted 16 existing basic care beds to an Alzheimer's and related dementia unit that began operations in September 2000.
3. Exner's Basic Care, Incorporated, in Jamestown plans to construct a new building for 20 Alzheimer's and related dementia residents and will transfer basic care beds from one of the company's other existing facilities that will be closed.

Conclusion

The committee makes no recommendation regarding the Alzheimer's and related dementia final report.

BUDGET TOURS

During the interim the Budget Committee on Institutional Services functioned as a budget tour group of the Budget Section and visited the State Hospital, James River Correctional Center, South Central Human Service Center, School for the Blind, Northeast Human Service Center, and Developmental Center. The committee heard information on facility programs, institutional needs for major improvements, and problems institutions or other facilities may be encountering during the interim. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the appropriations committees during the 2001 legislative session.

COMMERCE AND LABOR COMMITTEE

The Commerce and Labor Committee was assigned two studies. Section 16 of House Bill No. 1019 directed a study of the economic development efforts in the state, including the provision of economic development services statewide and related effectiveness, the potential for privatization of the Department of Economic Development and Finance, and the appropriate location of the North Dakota Development Fund, Inc., including potential transfer of the fund to the Bank of North Dakota. House Concurrent Resolution No. 3027 directed a study of heritage tourism and the relationships among the State Historical Society, Parks and Recreation Department, Tourism Department, Department of Economic Development and Finance, and private sector promoters and developers of heritage tourism in the state.

The Legislative Council also assigned the committee the responsibility under Section 5 of House Bill No. 1135 to make recommendations concerning the report of Job Service North Dakota regarding incentives to encourage an employee to decrease the length of time that employee receives unemployment compensation benefits and to encourage a negative employer to become a positive employer; the responsibility to receive annual reports from the Division of Community Services on renaissance zone progress and from the Department of Economic Development and Finance on performance of all divisions of the department, on the amount of success and satisfaction the department has in meeting business client, economic developer, and community client needs and expectations, and on a comparison of dollars spent to the economic benefits created of all programs administered or supervised by the director; and the responsibility to receive reports from the Workers Compensation Bureau regarding the bureau's safety audit of Roughrider Industries work programs and the bureau's performance audit of the modified workers' compensation coverage program, regarding the results of the bureau's study of the awards provided to injured employees with permanent impairments caused by compensable work injuries, and regarding the bureau's recommendations from the bureau's study of the benefits available to persons receiving long-term disability or death benefits from the bureau.

Committee members were Representatives Eliot Glasheim (Chairman), Rick Berg, Curtis E. Brekke, Byron Clark, Glen Froseth, William E. Gorder, Howard Grumbo, Nancy Johnson, George J. Keiser, Lawrence R. Klemin, Amy N. Kliniske, Dale C. Severson, Dorvan Solberg, and Elwood Thorpe and Senators Tony Grindberg, Karen K. Krebsbach, Deb Mathern, Duane Mutch, Harvey Sand, Harvey D. Tallackson, and Vern Thompson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

ECONOMIC DEVELOPMENT STUDY

The committee was charged with studying the economic development efforts in the state, including the provision of economic development services statewide and the related effectiveness, the potential for the privatization of the Department of Economic Development and Finance, and the appropriate location of the North Dakota Development Fund, Inc., including the potential transfer of the fund to the Bank of North Dakota.

Legislative Background

1999 Legislation

House Bill No. 1019 appropriated \$750,000 to the Department of Economic Development and Finance for the North Dakota Development Fund, Inc. The bill provided for ethanol incentives and provided that the money transferred to the North Dakota Development Fund must be dedicated for projects as follows: 40 percent businesses and rural areas, 40 percent businesses and urban areas, and 20 percent American Indian businesses. However, any unused funds in any category could be transferred to another category during the second year of the biennium, and the director of the department could reallocate up to 20 percent of any region's available remaining balance of regional rural development revolving loan funds to another region or regions. The bill further provided that, of the amount available in the North Dakota Development Fund, \$4 million or the unobligated balance on July 1, 1999, relating to the transfer of regional rural development loan fund moneys, must continue to be dedicated for the purposes of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanded primary sector businesses in areas of the state which are not within five miles of any city with a population of more than 8,000. The bill also included a provision stating that a political subdivision or economic development authority may adopt a minimum wage requirement for any new business or business expansion in which a majority of the capital is provided by the North Dakota Development Fund and its own local development funds.

House Bill No. 1141 eliminated the requirement that the Department of Economic Development and Finance have a division of science and technology. The bill replaced the requirement that the department report annually regarding loan performance of the department, including a comparison of dollars spent to the jobs created of all programs administered or supervised by the department and review of the timeliness of loan processing practices, with a requirement that the department report annually on the performance of all divisions of the department, including the amount of success and satisfaction the department has meeting business client, economic developer, and community client needs and

expectations, including a comparison of dollars spent to the economic benefits created of all programs administered or supervised by the department. The bill repealed the requirement that the department send an annual product listing of manufacturers located in the state to registered architects and engineers.

House Bill No. 1492 allowed the establishment of "renaissance zones" in cities. The bill provided an individual taxpayer who purchases single-family residential property as a primary residence as part of a zone project with an exemption of up to \$10,000 of personal income tax liability on the long-form or short-form return for five years beginning with the date of occupancy. A business that purchases or leases property for a business purpose as part of a zone project was exempted from income taxes for five taxable years for income derived from the business locations within the renaissance zone. An individual, partnership, limited partnership, limited liability company, trust, or corporation that purchases residential or commercial property as an investment as part of a zone project was exempted from income taxes for five taxable years for income earned from the investment. A historic preservation and renovation tax credit was provided against financial institutions' taxes, corporate income taxes, and individual income taxes on the long-form or short-form return for investments in historic preservation and renovation of property in the renaissance zone during the years 2000 through 2004. The credit for historic preservation and renovation is 50 percent of the amount invested and any excess credit can be carried forward for up to five taxable years. The bill provided a credit against state tax liability for financial institutions, corporate income taxes, and individual long-form or short-form returns for investments in a renaissance fund corporation. The credit is equal to 50 percent of the amount invested and excess credit can be carried forward for up to five taxable years. The total amount of credits for investments in renaissance fund corporations in the state may not exceed an aggregate of \$2.5 million for all taxpayers for all taxable years. The bill allowed a city to grant a property tax exemption for single-family residential property in a renaissance zone purchased by an individual as a primary place of residence. The exemption may not exceed five taxable years after the date of acquisition. A city could grant a partial or complete exemption for a building purchased by a business for a business purpose as part of a renaissance zone project. The exemption may not exceed five taxable years. A city could grant a partial or complete exemption for up to five taxable years from property taxes for buildings and improvements to residential or commercial property in a zone project purchased solely for investment purposes.

House Bill No. 1443 provided the requirements for institutions of higher education that are assigned primary responsibility for work force training. After the Legislative Assembly adjourned sine die, the Governor vetoed Sections 7, 9, 10, and 11 of House Bill No. 1443, relating

to funding work force training through employer work force investment fees.

House Bill No. 1456 allowed an addition to a residential or commercial building to qualify for the property tax exemption for building improvements and extended from three years to five years the time for which a city or county governing body may grant an exemption for building improvements.

Senate Bill No. 2096 provided new jobs training, and education program services developed and coordinated by Job Service North Dakota must be provided to primary sector businesses that provided self-financing as funding for new jobs training programs, and these employers may be reimbursed in an amount up to 60 percent of the allowable state income tax withholding generated from the new jobs positions.

Senate Bill No. 2137 repealed the law relating to the participation by the Bank of North Dakota in loans to nonfarming small business concerns.

Senate Bill No. 2242 provided for a beginning entrepreneur loan guarantee program.

Previous Studies

During the 1997-98 interim, the Legislative Council's Commerce and Agriculture Committee studied economic development functions in North Dakota, including the Bank of North Dakota programs, Technology Transfer, Inc., the North Dakota Development Fund, Inc., the Department of Economic Development and Finance, and other related state agencies. That committee made no recommendation with respect to its study.

Previous Legislation

In 1991 Senate Bill No. 2058, known as "Growing North Dakota" legislation, replaced the Economic Development Commission with the Department of Economic Development and Finance. The bill required the Governor to appoint a director of the department and provided for a Division of Finance, a Division of Marketing and Technical Assistance, and a Division of Science and Technology. Additionally, the bill provided for the establishment of the following funds:

- The agriculture partnership in assisting community expansion (Ag PACE) fund for the purpose of buying down the interest rate on loans to on-farm businesses.
- The partnership in assisting community expansion (PACE) fund for the purpose of buying down the interest rate on loans made by lead financial institutions in participation with the Bank of North Dakota.
- The primary sector development fund--North Dakota Economic Development Finance Corporation--for the purpose of taking equity positions in, providing loans to, or using other innovative financing mechanisms to provide capital for new or expanding businesses in the

state or relocating businesses to the state. Every full-time employee of a business receiving moneys or other assistance from the primary sector development fund was required to be paid an income at least equal to 100 percent of the federal poverty level for a family of four for the life of the loan, equity position, or other financial relationship, a requirement often referred to as the "living wage" requirement.

- The regional rural development revolving loan fund for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in areas in the state which are not located within five miles of any city with a population of more than 8,000. Funds in the regional rural development revolving loan fund were to be divided equally among the eight planning regions. Repayments from projects funded by the regional rural development revolving loan fund were to be credited to the local region.

The 52nd Legislative Assembly appropriated approximately \$21 million for economic development purposes for the 1991-93 biennium. Funding for the economic development program came from transfers from earnings from the Bank of North Dakota to the general fund.

The Growing North Dakota program established in 1991 was partially revised in 1993 by Senate Bill No. 2021, known as "Growing North Dakota II" legislation. That bill changed the name of the Science and Technology Corporation to Technology Transfer, Inc., and the name of the North Dakota Economic Development Finance Corporation to the North Dakota Future Fund, Inc.

In 1993 legislation also eliminated the requirement that the Department of Economic Development and Finance include a division of marketing and technical assistance. The legislation authorized the director of the department to establish additional divisions as necessary; however, the legislation required the department to contain an office of North Dakota American Indian Business Development and an office of North Dakota Women's Business Development.

In 1993 the Legislative Assembly appropriated additional funds for the Future Fund and Technology Transfer, Inc., for the remainder of the 1991-93 biennium because all the funds appropriated in 1991 had been expended. In addition, the Legislative Assembly appropriated approximately \$18.5 million for economic development programs for the 1993-95 biennium.

In 1995 the Legislative Assembly continued to make significant changes to the state's economic development tools. In House Bill No. 1021, the regional rural development revolving loan fund and the North Dakota Future Fund were replaced with the North Dakota Development Fund, Inc. However, the Legislative Assembly provided

that \$6 million of the funds in the North Dakota Development Fund must be dedicated for the purpose of providing financial assistance, research and development assistance, and the loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in areas in the state which are not within five miles of any city with a population of more than 8,000. Those funds were to be allocated for the benefit of each of the eight planning regions. The approximately \$2 million balance in the fund was to be dedicated for projects as follows: 40 percent businesses in rural areas, 40 percent businesses in urban areas, and 20 percent North Dakota American Indian businesses. However, the director of the Department of Economic Development and Finance was allowed to reallocate up to 20 percent of any region's allocation to another region or regions during the biennium. The director was also permitted to reallocate among the Technology Transfer, Inc., fund and the North Dakota Development Fund for rural and nonrural development projects up to 10 percent of the amounts appropriated.

In 1995 the Legislative Assembly also repealed the "living wage" requirement. The 1995-97 appropriation to the Department of Economic Development and Finance included approximately \$2 million for grants; \$1,454,000 for Technology Transfer, Inc.; and \$1,968,750 for the North Dakota Development Fund.

In 1997 the Legislative Assembly enacted Senate Bill No. 2019, which included within the appropriation for the Department of Economic Development and Finance a provision that repealed Technology Transfer, Inc., as of July 1, 1999. The bill also appropriated to the department \$1,909,875 for the North Dakota Development Fund; \$500,000 for Technology Transfer, Inc.; and \$4,097,462 for the Agricultural Products Utilization Commission.

Senate Bill No. 2019 allowed the director of the Department of Economic Development and Finance to reallocate among the Technology Transfer, Inc., fund and the North Dakota Development Fund for rural and nonrural development projects up to 10 percent of the amounts appropriated for the biennium. The bill provided that the money transferred to the North Dakota Development Fund must be dedicated for projects as follows: 40 percent businesses and rural areas, 40 percent businesses and urban areas, and 20 percent North Dakota American Indian businesses. However, any unused funds in any category could be transferred to another category during the second year of the biennium, and the director of the department was permitted to reallocate up to 20 percent of any region's available remaining balance of regional rural development revolving loan funds to another region or regions. The bill further provided of the amount available in the North Dakota Development Fund, \$4 million or the unobligated balance on July 1, 1997, relating to the transfer of regional rural development loan fund moneys, must

continue to be dedicated for the purposes of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanded primary sector businesses in areas of the state which are not within five miles of any city with a population of more than 8,000.

Senate Bill No. 2019 also included a provision stating that a political subdivision or economic development authority may adopt a minimum wage requirement for any new business or business expansion in which a majority of the capital is provided by the North Dakota Development Fund and its own local development funds. The bill also provided that the Agricultural Products Utilization Commission became a division of the Department of Economic Development and Finance. The bill included an agricultural prototype development program within the programs which the Agricultural Products Utilization Commission may administer.

Other 1997 legislation relating to economic issues included Senate Bill No. 2373, which provided a framework for investment in community development corporations by banks; Senate Bill No. 2398, which provided that the Industrial Commission, acting as the Farm Finance Agency, may establish the first-time farmer finance program to encourage first-time farmers to enter and remain in the livelihood of agriculture and to provide first-time farmers a source of financing at favorable rates and terms generally not available to them; Senate Bill No. 2396, which allowed a corporation or a limited liability company to own and operate the low-risk incentive fund, which makes loans to primary sector businesses; and House Bill No. 1401, which amended the seed capital investment credit provisions to eliminate the requirement of gross sales receipts of less than \$2 million in the most recent year and to allow the credit to apply for a business that does not have a principal office in the state but has a significant operation in North Dakota or more than 25 employees or \$250,000 of annual sales in a North Dakota operation.

Although the Department of Economic Development and Finance administered most of the major economic programs such as the North Dakota Development Fund, Technology Transfer, Inc., the North Dakota American Indian business development program, and the women's business development program, the Bank of North Dakota also administered economic development programs. In 1997 the Legislative Assembly appropriated \$4,000,600 for the PACE fund and appropriated \$397,100 for the Ag PACE fund. The beginning farmer revolving loan fund provided direct loans through the Bank of North Dakota to first-time purchasers of agricultural real estate. In 1997 the Legislative Assembly appropriated \$921,500 to the Bank of North Dakota for the beginning farmer revolving loan fund.

Economic Development Actors

The committee received extensive testimony from a broad range of state, local, regional, and private sector parties interested in economic development.

Bank of North Dakota

A representative of the Bank of North Dakota testified that the Bank's primary role is to assist private financial institutions and economic developers, and the objective of the Bank is to help private financial institutions manage risk and provide enhanced financial products to the institution's customers. The Bank complements and supports the work private financial institutions do through the Bank's lending programs.

The committee was informed that typically the Bank's programs are participation loan programs, meaning the private sector drives the process and the underwriting. To further leverage this participation lending approach, the Bank joined with four other state and federal financing agencies to form the One Stop Capital Center at the Bank. The Bank of North Dakota, Department of Economic Development and Finance, federal Small Business Administration, Federal Rural Development, and the Dakota Certified Development Corporation comprise the One Stop Capital Center. Testimony was received that the private banking industry, in tandem with the Bank of North Dakota and other state and federal financing agencies, is able to effectively provide loan financing for business development and expansion in North Dakota.

The committee received testimony regarding the feasibility and desirability of moving the North Dakota Development Fund to the Bank of North Dakota. A representative of the Bank testified that if the fund were located within the Bank, the Industrial Commission would oversee the fund. The committee received testimony from a representative of the Bank that the existing structure for economic development and location of the fund is successful, and there is no need to change this organizational structure. Testimony was received by a representative of a local development associate that the services provided by the Bank of North Dakota and by the Department of Economic Development and Finance need to be kept separate because they serve different purposes.

Department of Economic Development and Finance

The committee received testimony that the three goals of the department are to develop a shared vision for economic development efforts in the state, build the local capacity and ability of communities to secure successful investment outcomes, and promote the state to create awareness and to generate leads for successful investment outcomes. The current roles of the Department of Economic Development and Finance include business assistance, business recruitment, business finance, minority business development,

opportunity fund, program support, and special industry assistance. Testimony indicated that areas in which the department does not provide services include community development assistance, entrepreneurial development, and international trade and investment. Additionally, economic development services are lacking in program support in policy and planning, special industry assistance and telecommunications, state development strategic planning, technology development and transfer, and work force preparation and development. Testimony was received that the current move in the economy is toward a knowledge-based economy. Although the department is improving services provided, there is a real need to address globalization and international growth.

The committee reviewed extensive information regarding the current funding of the department and extensive information comparing the department's funding to funding of development agencies of other states. Additionally, the committee reviewed the National Association of State Development Agencies biennial report comparing development agencies and services provided across the country.

Division of Community Services

The committee received testimony that the Division of Community Services primary involvement in economic development is through community block grant funds. Further testimony indicated the division works closely with regional planning councils and the Department of Economic Development and Finance.

Indian Affairs Commission

The committee received testimony from a representative of the Indian Affairs Commission that Indian tribes are interested in economic development and should be a part of discussions regarding economic development.

Job Service North Dakota

A representative of Job Service North Dakota testified that because economic development is dependent upon an available and qualified work force, work force development is a critical element for economic development. Economic development efforts of Job Service North Dakota include the public employment service, which is the single largest source of available workers for North Dakota businesses; the labor market information section, which is the single largest source of labor market information; and Job Service North Dakota, which is responsible for administering federal and state work force training programs.

North Dakota University System

Testimony indicated that the North Dakota University System is involved in economic development in a variety of ways, including the Work Force Training Task Force, research, and the customized training network.

Additionally, the committee received updates on the status of the Economic Development Connection Task Force of the Higher Education Committee and reviewed the document *A North Dakota University System for the 21st Century: The Report of the Roundtable for the North Dakota Legislative Council Interim Committee on Higher Education*. The roundtable made the following recommendations:

- Pursue strategic alliance and partnerships with primary sector businesses and industries that have the strongest potential for expanding the economy of the region and the state.
- Strengthen planning and working relationships with local and state development organizations aimed at strengthening the local and state economy and fostering the quality of life factors of the region.
- Develop program offerings and delivery capabilities to close the gap between the strong and growing demand for graduates with technical education knowledge and skills in relation to the limited number of such graduates available within the state and nation.
- Offer educational programs on the topic of entrepreneurship at every institution within the University System.
- Encourage institutions to draw upon the knowledge and insights of the partnering entities to ensure state-of-the-art technology is being employed for teaching and research and is consistent with the technology being used in the private sector.
- Partner with the tribal colleges in delivering training to the reservations to allow these individuals to take advantage of the employment opportunities in the state.
- Develop opportunities that allow the American Indian community to take advantage of the underemployed and unemployed work force on the reservation in relation to the growing work force shortage in North Dakota.
- View the development and operation of the technology infrastructure as a public utility.
- Provide continued support for the work force training delivery system that was enacted in 1999.
- Establish incentives and rewards for and a culture supportive of entrepreneurial behavior on the part of the individuals at each level of the University System.
- Empower university presidents.
- Come to resolution on accountability measures.
- Recognize technology and the creation, development, and application of high technology as the key component of the new economy and add it to the four-part economy proposed in the Vision 2000 report.

- Identify research and development opportunities that have strong potential for positive economic impacts on the region, state, and institution.
- Encourage campuses to maximize the potential to the institution, students, state, nation, and world of the global marketplace.

North Dakota Workforce Development Council

The committee received status reports from the director of the North Dakota Workforce Development Council. Although the council does not include representation from the Legislative Assembly nor from the tribes, the council invites the Senate and House majority and minority leaders and the six tribal chairmen to each meeting of the council.

The four strategies of the council are:

1. Lifelong learning delivery system;
2. Kindergarten through grade 16 education responsiveness to change;
3. Recruitment and retention; and
4. Accountability and continuous improvement.

The council is working on a one-stop delivery system, and a memorandum of understanding was signed by all the one-stop participants except for the tribes. As part of the one-stop delivery system, an orientation program was implemented to familiarize all participants with programs linking with the one-stop delivery system and a web-based system for customer referral is being implemented.

Local Development Associations

The committee received testimony from representatives of several local development associations regarding the roles of local development associations in economic development. A representative of the North Dakota Association of Rural Electric Cooperatives suggested the committee consider that:

- Programs need to change the perspective that things are better somewhere else;
- State policymakers need to approach economic development as a long-term investment and stop approaching economic development in two- or three-year cycles; and
- State policymakers need to "take a big breath" because people are pulled to change, not pushed to change.

The committee received testimony in opposition to the decrease in funding of the Technology Transfer, Inc., program. Additionally, testimony was received that some rural communities are having problems finding people to fill economic development director positions, and the concern was raised that the state needs to focus on some of the smaller communities in the state rather than the seven largest cities in the state.

Economic Development Association of North Dakota

Testimony was received that two of the Economic Development Association of North Dakota's five-year goals are to have 25,000 new primary sector jobs created in the state and to increase North Dakota's per capita income to at least 93 percent of the national average. The association recommended the state consider the following proposals to strengthen economic development in North Dakota:

1. Create a North Dakota department of commerce, which might include the North Dakota Department of Economic Development and Finance, Tourism Department, Division of Community Services, Labor Department, and the North Dakota Workforce Development Council;
2. Focus on economic development finance and incentive programs, which include existing programs and may include an investment capital fund and a speculative building program;
3. Focus on work force development, which may include existing programs as well as a possible state-supported labor recruitment program, an incentive program for college graduates to stay and work within the state, a low-interest rate mortgage program that might attract employees back to the state, and stronger or new program offerings in the University System;
4. Increase economic development marketing, public relations, and education, which goes beyond marketing North Dakota's tourism;
5. Develop the technology infrastructure, including development and implementation of a statewide plan connecting all areas with a fiber optics and broad bandwidth network; and
6. Focus on agricultural support and development, including support of existing programs and consideration of development of new programs that have the capacity to support shifting the state from a commodity-producing state to a food-producing state.

Entrepreneurs

The committee received testimony from a variety of entrepreneurs regarding the entrepreneurs' economic development experiences in the state, including the use of state, regional, and local economic development services. Entrepreneurs raised concerns that:

- The state may not be doing enough to support technology;
- There are inadequate programs to assist in business startups; and
- There is a lack of venture capital available to businesses and entrepreneurs.

Greater North Dakota Association

The committee received testimony from a representative of the Greater North Dakota Association regarding

the association's role in economic development. Association membership includes local developers, regional developers, and private industry. The mission of the Greater North Dakota Association is to be the voice of business and the principal advocate for positive change for North Dakota.

Griggs-Steele Empowerment Zone

The committee received a report on the status of the Griggs-Steele Empowerment Zone. The Griggs-Steele Empowerment Zone is one of five recipients designated a Round II Rural Empowerment Zone by the federal government. The designation as an empowerment zone was in large part based on the communities' high outmigration record, and the designation will allow for grant awards and the ability to offer loans through a revolving loan pool. Testimony was received that the four goals of the empowerment zone are job creation, creation of new wealth, enhancement of quality of life, and demonstrable sustainability of the program. The Griggs-Steele Empowerment Zone Board will work with Job Service North Dakota and the Department of Human Services to determine whether elements of the empowerment zone plan can be dovetailed with state programs.

Job Development Authorities

The committee received testimony from representatives of several job development authorities regarding the role of authorities in economic development. Duties of job development authorities include building relationships with manufacturers, holding town hall meetings, and reporting on the progress of the job development authority. Testimony was received that the relationship between job development authorities and the Department of Economic Development and Finance could be strengthened through semiannual meetings.

Regional Planning Councils

The committee received testimony from several regional planning councils regarding the role of councils in economic development. Regional planning councils were originally part of the Growing North Dakota plan. One role of regional planning councils is to channel federal economic development funds to local communities. Typically, the councils try to work as a team with local development associations. Additionally, the councils have had partnership relationships with the Division of Community Services, the Department of Economic Development and Finance, federal agencies, local development groups, and primary sector businesses. Testimony was received that regional planning councils and local developers do not overlap activities but fill voids and in some instances strengthen and support local development activities.

A representative of a regional planning council encouraged the committee consider the following suggestions:

1. Reinstate contracts between regional councils and the Department of Economic Development and Finance;
2. Encourage the Division of Community Services to establish a relationship with regional councils to service and collect from block grant borrowers;
3. Restructure the Sunday fund so that regional councils can use those funds to leverage additional federal dollars to the state; and
4. Encourage all state agencies, before adding new full-time employees or contracting with consultants, to consider hiring regional councils.

The committee received testimony regarding regional council funding sources, which include fees paid by member communities, contracting fees from public and private organizations, interest from loans issued by the council, and federal programs. The 1999-2001 appropriation for the Department of Economic Development and Finance did not include funds for regional planning councils. Testimony was received that an unfortunate result of this action has sometimes been a decrease in communication with the department. As state and federal sources dry up, regional and local economic development organizations have had to try to do more with less. Testimony was received that the four-mill tax levy available to counties for regional economic development councils is not always adequate to provide the necessary economic development services.

Small Business Development Center

The committee received testimony from a representative of the Small Business Development Center regarding the role of the center in economic development. The Small Business Development Center is a state-federal and public-private partnership program that is funded by the federal Small Business Administration, the North Dakota Department of Economic Development and Finance, the University of North Dakota, and the private sector.

The Small Business Development Center helps small business owners, managers, and employees deepen their understanding of small business management by providing analysis, data, and assistance that is generally beyond the capacity of a small business to purchase in the private sector. Testimony indicated that the major objectives of the Small Business Development Center are to continue to develop an effective working relationship with the North Dakota Department of Economic Development and Finance; provide timely, quality assistance that is cost-effective and has measurable economic impact; provide long-term, in-depth counseling; provide quality, in-depth business assistance through information transfer, consulting, training, networking, and one-to-one counseling; provide a wide range of business development and technology assistance services to small businesses located in rural

areas; develop and foster working relationships with colleges and universities, vocational centers, and public high schools; identify resources within the University System to assist entrepreneurs; and involve college students in the delivery of Small Business Development Center services.

Venture Capital

The concern was raised from several sources that there is a lack of venture capital opportunities in the state. The committee formed a Commerce and Labor Committee Subcommittee on Venture Capital to focus on the issue of venture capital. Subcommittee members were Representatives Eliot Glassheim (Chairman), George J. Keiser, and Dale C. Severson and Senators Tony Grindberg and Deb Mathern. Testimony was received by the committee and subcommittee from a variety of parties interested in venture capital.

Testimony indicated that in addition to the direct benefits of increasing capital investment in the state, indirect benefits may include increased numbers of jobs, new wealth creation, increased taxes paid by businesses, and increased sales taxes collected. The committee was encouraged to remember that the direct and indirect benefits may take years to recognize.

A representative of the Bank of North Dakota testified there is a need for additional sources of private and public venture capital that are usually in short supply for most business startups and expansions. Historically, North Dakotans have sent their investment dollars out of state rather than investing in new business development in the state; therefore, there need to be incentives and encouragement from North Dakota to invest equity capital in the state. Testimony was received that the state's next step should be to increase funds available for risk equity capital and to implement more tax incentives and other investment vehicles such as mutual fund-type investments in state projects.

A report was received from a representative of the North Dakota Development Fund, Inc., regarding venture capital investment opportunities within the state. Additionally, the history of the North Dakota Development Fund and the evolution of the fund was reviewed. At the inception of the fund, 75 percent of the funds were involved in equity investing and 25 percent of the funds were involved in subordinated debt. Currently, 70 percent of the fund is in subordinated debt and 30 percent in equity investing. As a result of this current strategy, money in the fund is tied up for a shorter period of time than it would be under an equity investment. If the fund had not been restructured, however, the fund would likely have run out of funding money.

Testimony was received from representatives of the Department of Economic Development and Finance that the state could use the North Dakota Development Fund as a mechanism to provide venture capital to businesses

in the state; however, the fund has been underfunded and would need to be revitalized to take on this task.

Testimony indicated the state has difficulty attracting venture capitalists for a variety of reasons, including the lack of large venture capital opportunities; the small volume of business plans within the state; the large percentage of small, private businesses within the state; the tendency of venture capitalists to locate in the geographical areas in which they want to invest; the lack of industry specialization within the state; the tendency of venture capitalists to co-invest with other venture capitalists; and the lack of venture capitalists within the state.

Most venture capital available in the United States is directed at issues of \$10 million and more, whereas most offerings in North Dakota are less than \$5 to \$10 million. Testimony was received that there are several startup projects in the state which are in need of \$50,000 to \$100,000 to move to the next level.

Testimony was received that in order for a basic investment fund to be feasible, the fund would require at least \$5 million to begin marketing and \$10 million to begin funding projects. Further testimony supported the idea of funding a state venture capital fund from a blend of private and public resources. Some testimony supported requiring funding for startups to include funding from the state, from the banking sector, and the business owner.

Testimony was received that although there is a growing need for venture capital and seed money and although nearly all businesses could benefit from capital, some businesses in the state may need assistance and education regarding how to appropriately use the capital. It may be necessary for the state to provide some type of program to educate people regarding venture capital and for the state to participate in marketing the capital investment concept.

Testimony was received that the state should establish a tax credit on investments made to venture capitalists; should establish its own venture capital fund, operating like a venture capitalist in the private market, with higher internal rates of return; should lessen the restrictions on venture capital corporation incorporation; and in order to encourage venture capitalists to consider North Dakota investments, should create a fund that matches a portion of investment dollars and which takes a subordinated position to other investors. Additional suggestions to increase capital investment in the state included the state providing staffing, due diligence, and marketing services without actually making an appropriation to a venture capital fund.

In considering possible approaches to increase venture capital opportunities, the committee and subcommittee learned that federal laws and regulations may be significant barriers to creating a statewide investment group. Additionally, differences were considered between true venture capital and benevolent venture capital, and barriers include an unwillingness of

some business people to let go of control of a company to receive financing, very few North Dakota businesses plan on going public, smaller businesses in the state may lack the expertise to create a competitive business plan and attract investors, and the perception of the public when the state takes equity positions in businesses.

Privatization and Consolidation

Privatization

The committee received testimony from a representative of Market Street Services, Inc., regarding privatization of state economic development services. Key economic development trends include globalization, technology and telecommunications, regionalism, sustainable development, and work force preparation. The increasing need for a qualified work force has resulted in the trend of providing work force training. Financial incentives for work force training may include tax credits, incentives specific to particular types of industry, or incentives available to existing businesses.

The committee received testimony that reasons in support of privatizing economic development services include removing economic development from politicians, which results in continuity between administrations; providing greater expertise as economic development gets more complicated; dealing better with the private sector elements of economic development; allowing greater flexibility in responding to market changes; and getting the private sector to be involved and help fund economic development. Testimony also indicated states that have privatized elements of economic development continue to control economic development and require accountability for economic development in a variety of ways.

The executive director of the Department of Economic Development and Finance testified in opposition to complete privatization of the state's economic development efforts in part because there is a need for public accountability if public dollars are involved. However, testimony was received that globalization might be a good example of an area that would benefit from private/public partnerships.

A representative of the Department of Economic Development and Finance testified that some potential benefits of private/public partnerships may include:

- Improved leadership roles in economic development;
- Improved vision and a strategic plan to guide the state's economic development;
- Reduced role of politics in economic development;
- Increased consistency in state development efforts;
- Leveraged public sector funds with private sector funds for economic development;
- Reduced state costs for economic development;

- Improved performance and accountability of economic development;
- Improved quality and professionalism of state development staff;
- Increased flexibility in how state economic development organizations manage resources;
- Reduced size of state government;
- Improved responsiveness of economic development in meeting the needs of business;
- Improved effectiveness of state, regional, and local economic development;
- Improved coordination of resources at all levels of economic development;
- Improved dialogue between private sector, executive, and legislative branches;
- Increased continuity in state development efforts when governors and legislators change;
- Increased use of private sector leaders as development ambassadors;
- Improved responsiveness by state development economic changes and business needs; and
- Improved information to better support state development.

The committee received information from representatives of the National Association of State Development Agencies regarding privatization of state economic development services and associated trends. The current trend in privatization is more frequently implemented through a targeted approach, whereby privatization deals with one particular niche, versus a broad approach in which the privatization is general purpose. Typically, the targeted approach provides for a private, nonprofit board that oversees the activities of the public economic development agency. With a private advisory board, typically the Governor chooses the board members, and the Governor and the Legislative Assembly choose how to appropriate funds for economic development.

Testimony indicated four of the primary objectives of states that privatize economic development services are:

1. Assisting in leveraging support of the private sector, primarily in the form of in-kind support versus financial support;
2. Creating a forum to get advice and counsel from the private sector;
3. Increasing the level of buy-in from the private sector; and
4. Increasing the private sector's acceptance of state economic development programs.

Four characteristics typically found in successful privatization efforts are:

1. A clear set of objectives and the role privatization is expected to play;
2. Clearly established relationships between the private and public sectors;
3. Clear funding goals and expectations of the private sector; and

4. A form of accountability to assure the private sector that one industry is not receiving preferential treatment over another industry.

A representative of the Bank of North Dakota testified that if economic development services are privatized, it will be necessary to reevaluate which organization should be in control of finances, and it is possible the Bank of North Dakota's role would be larger under those circumstances.

Consolidation

A representative of the National Association of State Development Agencies testified that trends in economic development include the move toward centralization or creation of a mechanism to facilitate unification, such as creation of an economic development cabinet; unification through a single economic development budget; and proliferation of economic development at regional and local levels, whereby even if the state has some degree of control over centralization, it is difficult for a state to control or centralize at the local and regional levels.

The committee conducted a survey of state agencies to determine which agencies are providing economic development services and the financial resources dedicated to these services. The results of this survey indicated a mixed response to cooperating in the survey and indicated economic development services are provided by a broad range of state agencies.

The National Association of State Development Agencies surveyed state agencies regarding the provision of economic development services within the state and submitted the report *NASDA Report to North Dakota on Potential Fine Tuning of State Economic Development Program*. The Department of Economic Development and Finance received high marks across the board in the survey, and negative observations indicated that perhaps there are too many economic development service providers within the state, and there does not appear to be a mechanism to coordinate the state economic development services. The report encouraged the state to:

- Establish a central cabinet-level department of commerce;
- Set up a regional network to support local economic development activities;
- Create a commerce cabinet;
- Create a unified economic development budget; and
- Establish a private, nonprofit council to serve as an advisory council to the Department of Commerce.

Testimony was received that if the committee considers consolidation of economic development services, existing state agencies may be consolidated into a larger agency, an entirely new agency could be created, or a combination of these two approaches could be used.

The director of the Department of Economic Development and Finance testified that creation of a department of commerce could increase efficiency and improve customer service; however, the value of consolidation is more than just efficiency and one-stop shopping--the primary benefit is coordination of economic development services and planning. The consolidation in and of itself will not automatically result in more efficiency. A representative of the Bank of North Dakota testified that it is not realistic to have "one-stop" shopping for all economic development services.

Manufacturing Extension Partnership

The Manufacturing Extension Partnership is a federal program that arose out of the downsizing of federal defense programs in an attempt to encourage manufacturing diversification and competitiveness. The program is a nationwide network of nonprofit performance centers, the sole purpose of which is to provide small- and medium-size manufacturers with the help they need to succeed. Funding for the program is one-third federal funds; one-third state funds; and one-third private sector support, primarily in fee for services.

North Dakota had a Manufacturing Extension Partnership program initiated in 1995, under the direction of Technology Transfer, Inc. As Technology Transfer, Inc., was phased out in 1997, the administration of the program was transferred to North Dakota State University. Pursuant to a review of the state's program in 1999, the federal agency in charge of the program suspended the state's program. Since the program lost federal certification, the Department of Economic Development and Finance has attempted to revitalize the program. The program would be a model for other private/public partnerships. The private aspect of the program is the steering committee, which is made up of representatives of private industries.

State Economy

The committee received a report from a representative of the Federal Reserve Bank of Minneapolis regarding the state's economic health; a report from a representative of the Red River Trade Council, Inc., regarding the current state of the region's economy and trends in the areas of agriculture, technology, and transportation; and reports on economic development trends and future economic development opportunities in the state.

Population Retention and Demographics Project Back Home

The committee received a report from a representative of Project Back Home regarding population growth efforts being taken by the program. Members of Project Back Home pay membership dues and include private businesses, counties, and cities. Project Back Home contains the following three phases:

1. Creation of a mailing list from which to create leads for the business or community;
2. Collection of interest survey information from individuals who respond to Phase I; and
3. Creation of a recruitment data base.

The Project Back Home web site at home.northdakota.com is a fully interactive web site on which participants can post information such as job opportunities, and visitors can complete employee surveys. Testimony indicated that in order for people to return to the state, adequate job opportunities need to exist, a high quality of life is required, and the jobs available must have competitive salaries.

CareerLinkNorth

The committee received a report from a representative of CareerLinkNorth. The CareerLinkNorth program is modeled after a similar program in Omaha, Nebraska, called CareerLink. Testimony indicated the objective of CareerLinkNorth is to:

- Deliver an aggressive quality marketing plan to create awareness of career opportunities through the CareerLinkNorth web site at www.careerlinknorth.com;
- Create an environment that fosters working as a team and addressing labor availability issues regionally;
- Develop a team of highly motivated, results-oriented organizations committed to the mission;
- Gain recognition as a successful organization that can affect positive changes as it relates to our region's growth, educational efforts, and social culture; and
- Encourage the sharing of resources, information, and time for a unified effort statewide.

North Dakota State University Data Center

The committee received a report from a representative of the North Dakota State University Data Center regarding the state's demographic trends in relation to economic development in the state. The trend in North Dakota of loss of population in rural communities is consistent with what is happening in all the states in the Great Plains. Three elements relevant to population are the number of births, deaths, and migrations. Testimony indicated that one element factoring into the loss of population in the Great Plains is that the number of acres per farm is increasing. North Dakota is at a point of change in the 21st century just as it was in the 1930s. In the 1930s there were agricultural changes, and in the 21st century there are technological changes. In the 1930s railroads connected communities, whereas now technology links communities.

In the 1990s North Dakota became a state with more of its residents living in urban areas than in rural areas. This consolidation of people to the larger communities is age and gender specific. In North Dakota, the senior

citizen population now exceeds the youth population; the number of births in the state has been declining since 1982; and a growing number of counties experience fewer live births than deaths. As a result of this population change, the size of the available work force is decreasing.

Studies indicate there is a false perception among North Dakota graduates that job opportunities do not exist within the state. Statistics show if graduates were better informed, more graduates would remain in the state. Incentives to keep graduates in the state may include student loan buydowns, improved marketing of the quality of life in North Dakota, higher wages, and linking students to employers sooner than they are now being linked.

Information Technology

The committee received a report from a representative of the Information Technology Department regarding the status of state connectivity. Testimony indicated that the four pillars critical to future success in the new economy are telecommunications infrastructure, tax and public policy, building the North Dakota information technology work force, and economic development and business opportunities through technology.

The state network is designed to provide voice, data, and video transmission for government purposes and for education. Under the proposed network, there will be 222 cities and 544 locations encompassed in the network. Testimony indicated that an unresolved issue in implementation of the new network is the source of funding. Funding is necessary for hardware upgrades, the increase in reoccurring costs, video equipment, and for training and support.

Testimony was received that the building of North Dakota's information work force is very important, and this testimony indicated that education from the public school system through the universities and community colleges should encourage math, science, and other appropriate information technology curricula. Additional testimony indicated there are tremendous business opportunities available as a result of improved technology. Tactics communities can employ to attract or foster e-business include:

- Grants and other types of funding to startup businesses;
- Low-interest loans and other mechanisms available to local governments to finance knowledge-based industries;
- Free office space to support networks that address technological and marketing problems shared by many startup businesses and e-commerce conversion efforts;
- Financial assistance directly tied to work force development; and
- Discounted rates on electricity and telecommunication services.

The Chief Information Officer of the Information Technology Department made the following recommendations to the committee:

- Ensure kindergarten through grade 12 and the higher education system produces technology-literate students;
- Improve communications among those involved with each of the four pillars;
- Maintain flexibility but require accountability;
- Develop comprehensive integrated programs and overall budgets to address all four pillars necessary for the new economy; and
- Encourage the 57th Legislative Assembly to focus on an integrated information technology program.

A representative of the Southwest Information Technology Council and the Information Technology Council of North Dakota testified that the state's policies must encourage the use and expansion of the Internet and other new digital technologies. Especially important are the issues of connectivity, taxation, free speech, and government engagement in e-commerce at every opportunity. Testimony indicated that once the state reaches connectivity, pertinent issues may include Internet security and the state's role in policing Internet activities.

Work Force Development Program Inventory

The committee worked with the National Conference of State Legislatures in compiling a state inventory of job training programs that have a work force development component. The inventory indicated that the Department of Corrections and Rehabilitation, Department of Human Services, Department of Public Instruction, Department of Transportation, Job Service North Dakota, North Dakota University System, State Board for Vocational and Technical Education, Veterans' Employment and Training Service, and Workers Compensation Bureau provide approximately 40 work force development programs.

Committee Considerations

The committee considered a bill draft that would have provided the Department of Economic Development and Finance include a marketing division and an economic development and finance service provider division, that the costs of administering the Bank of North Dakota be funded by profits of the Bank in an amount equal to at least 21 percent of the Bank's profits, and that the Department of Economic Development and Finance be funded from profits of the Bank.

The committee considered a bill draft that would have clarified and specified particular goals for the Department of Economic Development and Finance.

In considering a bill draft to create a commerce department, commerce cabinet, and commerce foundation, the committee considered funding the foundation

from state funds and including the Department of Labor in the Department of Commerce.

Recommendations

The committee recommends House Bill No. 1039, based on an Ohio bill, to create a North Dakota venture capital fund program under which a seven-member North Dakota Venture Capital Authority creates a general lending and investment policy and designates a for-profit investment fund to carry out the lending and investment components of the program. The bill provides for lending to and investment of private moneys in seed and venture capital partnerships and provides for a one-time issuance of \$5 million of state tax credits to the authority to guarantee losses under the program.

The committee recommends House Bill No. 1040 to create a North Dakota entrepreneur seed fund program under which a nine-member North Dakota entrepreneur seed fund board administers the North Dakota entrepreneur seed fund. The fund would be available to local entrepreneur seed fund applicants on a 500 percent local fund match basis to invest in North Dakota early-stage companies and small companies through equity or equity-type investments. Additionally, the bill provides a \$3 million appropriation from the general fund to fund the program for the 2001-03 biennium.

The committee recommends House Bill No. 1041 to amend the law relating to seed capital investment tax credits. The bill would allow the seed capital tax credit on the state income tax short form, lessen the requirements to be classified as a qualified business under the seed capital investment tax credit law, allow taxpayers to claim the seed capital investment tax credit for any amount up to \$50,000, allow a seed capital investment tax credit to exceed 50 percent of the taxpayer's tax liability, provide seed capital investment tax credits for investments in one qualified business may not exceed \$250,000, decrease certain limitations on how a qualified business may use a seed capital investment, and increase the annual aggregate amount of seed capital investment tax credits from \$250,000 to \$500,000.

The committee recommends House Bill No. 1042 to decrease the venture capital corporation incorporation financial requirements to allow for smaller venture capital corporations to incorporate in the state.

The committee recommends Senate Bill No. 2032 to create a department of commerce by consolidating the Division of Community Services, Department of Economic Development and Finance, and Tourism Department. The new department would be administered by a commissioner of commerce. The bill would also create a North Dakota commerce cabinet and would allow for creation of a privately funded North Dakota development foundation.

The committee recommends House Bill No. 1043 to provide for state payment of certain student loans. The bill would provide that the Bank of North Dakota

administer a student loan payment program that would be available to graduates of eligible postsecondary educational institutions in the state who are residents of the state and are employed in target industries located in the state. The target industries would be determined by the Department of Economic Development and Finance on an annual basis, and the department would be required to report to the Legislative Assembly during each regular legislative session. The maximum monthly payment under the program would be \$166.66 per month for a maximum of 24 months. Additionally, the bill would provide for a \$2 million appropriation from the general fund for the program for the 2001-03 biennium.

HERITAGE TOURISM STUDY

The committee was charged with studying heritage tourism and the relationships among the State Historical Society, Parks and Recreation Department, Tourism Department, Department of Economic Development and Finance, and private sector promoters and developers of heritage tourism.

Legislative Background

1999 Legislation

The 56th Legislative Assembly enacted the following bills relevant to heritage tourism—House Bill No. 1012, which allowed for the purchase of a commemorative Lewis and Clark motor vehicle license plate; House Bill No. 1208, which transferred supervision of the International Peace Garden from the State Historical Board to the Parks and Recreation Department; Senate Bill No. 2015, which provided a \$25,000 appropriation to the Council on the Arts for a grant to the Plains Art Museum for the Lewis and Clark Bicentennial event; Senate Bill No. 2020, which provided a \$931,345 appropriation to the State Historical Society for the Lewis and Clark Bicentennial and removed the \$190,000 appropriation requested in the executive budget for the Gingras Trading Post planning and design; and Senate Bill No. 2022, which provided a \$123,995 appropriation to the Tourism Department for the Lewis and Clark Bicentennial.

Previous Studies

During the 1989-90 interim, the Legislative Council's Jobs Development Commission studied the state's bountiful natural resources and outdoor recreation activities with an emphasis on the state's wildlife resources and enhancement of the resources for the benefit of North Dakota citizens and economic development. The commission joined with the Tourism Promotion Division of the Economic Development Commission to hire a consultant for the development of a tourism master plan and for the performance of related research. A consortium of tourism specialists known as International Tourism and Resort Advisors was selected to prepare the master plan and related research. The master plan

and research addressed three primary concerns of state tourism promotion:

- The formulation of information on who is visiting the state and why, and what state residents are doing insofar as visitations in the state and outside the state.
- An analysis of the economic effects tourism and recreational experiences have on the state, including employment generated by tourism.
- The development of a master plan for tourism and natural resource development in the state, including a five-year action plan, a monitoring tool to measure what effect the state's tourism effects are having in the state, and insight into how the state can invest in the tourism industry to get the maximum returns from its investments.

The master plan and research was consolidated and bound in a two-volume set. Volume I contains a long-range master plan for the expansion of tourism in the state, presents a short-range action plan, and describes the methodology for monitoring effectiveness of the state's tourism program. Volume II contains profiles of travelers in the state and describes the economic impacts of travel throughout the state.

Previous Legislation

In 1991 the 52nd Legislative Assembly enacted the following legislation relevant to heritage tourism:

- House Bill No. 1044 provided for adoption of a state tourism policy that would guide the growth of the state's tourism sector.
- House Bill No. 1045 revised the definition of a bed and breakfast facility to allow four-bedroom units and to place limitations on the county and city governments' authority to impose stricter health and safety, licensure, and inspection requirements on the bed and breakfast facilities.
- House Bill No. 1046 repealed state law relating to the conduct of business on Sunday.
- House Bill No. 1047 required the Department of Transportation to establish rules for the erection and maintenance of tourist-oriented directional signs.
- Senate Bill No. 2054 established the State Department of Tourism for the purpose of fostering and promoting tourism to and within the state and for full development of the state's tourism resources. The bill established the Tourism Advisory Board for the purpose of advising the Governor regarding the promotion and development of tourism in the state.
- Senate Bill No. 2057 increased the maximum annual permit fee on motor vehicles entering state parks to \$20 and eliminated the free senior citizen entrance permits.

In 1993 the 53rd Legislative Assembly enacted the following legislation relevant to heritage tourism:

- House Bill No. 1400 removed tourism from the State Parks and Tourism Department to create a State Tourism Department and created an Outdoor Recreation Interagency Council.
- Senate Bill No. 2419 allowed rural agricultural business attractions to use tourist-oriented directional signs.

In 1995 the 54th Legislative Assembly enacted the following legislation relevant to heritage tourism:

- Senate Bill No. 2156 removed Camp Hancock from the properties the State Historical Board maintains and operates as a historic house museum.
- Senate Bill No. 2157 decreased the number of members on the State Historical Board from nine members to seven members.
- Senate Bill No. 2207 allowed the North Dakota Heritage Center to charge admission fees for leased exhibitions.

Testimony

The committee received testimony from representatives of the following state agencies and nonprofit organizations regarding their roles in heritage tourism-- Department of Economic Development and Finance, Indian Affairs Commission, Parks and Recreation Department, State Historical Society, Tourism Department, Fort Abraham Lincoln Foundation, and North Dakota Lewis and Clark Bicentennial Foundation.

The director of the Department of Economic Development and Finance testified that because tourism is a primary sector business, the department is interested in promoting tourism. The department looks to enhance private sector investments surrounding heritage tourism.

The executive director of the Indian Affairs Commission testified the commission's role is to act as a liaison between state government, tribal governments, and organizations and to educate the public to end negative stereotypes of American Indians. The Indian tribes are intimately related to heritage, and heritage tourism is one of the largest untapped business resources for the tribes.

The director of the Parks and Recreation Department testified that although land is a heritage resource, in addition to the state park land, the department offers a wide variety of park and recreation services. Several groups work in concert with the Parks and Recreation Department, forming a relationship that works to complement each of the parties involved. The director testified that if a private organization such as the Fort Abraham Lincoln Foundation presented a private management proposal, the proposal would be reviewed, and it would be determined at that time whether the department is authorized under law to enter into such an agreement.

The director of the State Historical Society described the role of the State Historical Society in heritage tourism as providing the product and the role of the

Tourism Department as promoting the product. Additionally, the State Historical Society has relationships with a variety of nonprofit organizations that provide assistance with staffing sites, securing funding, and increasing public awareness of various historical sites. The committee received testimony that needs in the area of heritage tourism include increasing financial resources, including operating funds; increasing legislative support of heritage; and creating a grant system for local historical organizations.

The director of the Tourism Department described the department as the state advertising agency for tourism. Testimony indicated that although the 1999 Legislative Assembly appropriated money designated for the Lewis and Clark Bicentennial and that this money is very valuable and important, the committee needs to remember that North Dakota is the least-visited state and is also the least-funded state for tourism.

The executive director of the Fort Abraham Lincoln Foundation testified that the Custer House is a private building built with private funds which is on state land. The foundation leases the Custer House to the Parks and Recreation Department for \$1 per year, and through this lease agreement, the foundation is allowed to conduct living history tours of the house. The committee reviewed information regarding the economic impact of the Fort Abraham Lincoln Foundation, fee totals for the Fort Lincoln State Park, and the Fort Lincoln State Park budget. The committee received information regarding a possible foundation proposal to create a pilot project under which the foundation would have managed the Fort Lincoln State Park. Testimony indicated that although private, nonprofit organizations manage some other state parks in North Dakota, the Fort Lincoln State Park site is considerably larger than the privately managed sites. The foundation suggested the possibility that the foundation may be able to run the park for less money than the state does.

The chairman of the North Dakota Lewis and Clark Bicentennial Foundation testified that the Lewis and Clark Interpretive Center in Washburn is managed and funded by a nonprofit organization and is owned by the state through the Parks and Recreation Department. Additionally, the Tourism Department helps to market the interpretive center, and the State Historical Society is active in the foundation's interpretive efforts. Testimony was received that the relationship between the foundation and the state is an example of a private/public partnership that works for the betterment of the state.

Committee Considerations

The committee considered problems the Fort Abraham Lincoln Foundation and the Parks and Recreation Department had renegotiating a lease agreement and whether current law adequately addresses the authority of the director of the Parks and Recreation Department to contract with private, nonprofit

organizations for the provision of management services at state parks.

Conclusion

The committee makes no recommendations with respect to its study of heritage tourism.

REPORTS

Division of Community Services Report

The committee received two annual reports from the Division of Community Services on renaissance zone progress. The Division of Community Services worked with the Tax Department to create the details of the renaissance zone plan. Because the division does not have administrative rulemaking authority, the division instead fleshed out the details of the renaissance zone plan through what is called a "program statement." The committee reviewed the renaissance zone program statement, which addresses the following 12 main topics:

1. Division of Community Services responsibilities;
2. State Tax Commissioner responsibilities;
3. Renaissance zone cities responsibilities;
4. Tax exemptions and credits;
5. Creation and administration of renaissance fund corporations;
6. Income tax statistical information;
7. Passthrough of tax exemptions or credits;
8. Definitions;
9. Renaissance zone policies;
10. Information required for project final approval by the Division of Community Services;
11. Renaissance zone program procedures; and
12. Recordkeeping for annual monitoring and reporting of renaissance zones.

A representative of the Division of Community Services testified that the three communities with approved renaissance zones are Casselton, Fargo, and West Fargo, and these three communities have a total of five projects underway. All three approved communities contracted for services with Dakota Renaissance Venture Corporation. Additionally, several communities are in the process of creating renaissance zones. The committee received from the Division of Community Services a list of 32 potential items or issues for possible legislative changes relating to the renaissance zone law. Some of the items on the list were technical in nature and others were substantive and policy oriented.

The committee received testimony that it is important the renaissance zone law allow for a statewide renaissance fund corporation that may be a limited liability company and to allow for tax benefits for rehabilitation and improvement of real property.

The committee considered a bill draft implementing 12 of the 32 potential items or issues for possible legislative changes submitted by the Division of Community Services. The committee determined the 20 potential items or issues for possible legislative changes which

were not included in the bill draft were substantive and policy oriented. Additionally, the committee considered including in the bill draft provisions allowing for a state-wide renaissance fund corporation, clarifying that if or when a renaissance fund corporation dissolves the assets of the fund are distributed to investors in proportion to the investment in the fund, and allowing zones of less than 20 blocks to expand up to 20 blocks and allowing these expanded blocks to have renaissance zone status for up to 15 years.

Recommendation

The committee recommends Senate Bill No. 2033 to make the following changes to North Dakota Century Code Chapter 40-63, regarding renaissance zones:

- Change references from the Office of Intergovernmental Assistance to the Division of Community Services;
- Remove the definition of original principal amount;
- Clarify that an income tax exemption is effective beginning the year of the purchase or lease;
- Clarify the purpose of a renaissance fund corporation does not include the provision of financing to enterprise zone projects;
- Remove the requirement that a petition for investment in a renaissance zone must include a plan for sale or refinancing that results in proceeds equal to or in excess of the proportional investment made by the renaissance fund corporation;
- Repeal Section 40-63-08, regarding renaissance zone contribution use;
- Remove the requirement that the Division of Community Services and the Tax Commissioner issue renaissance zone forms to eligible taxpayers for the purpose of monitoring the use of any exemptions or credits received by taxpayers;
- Provide that a development plan map include a description of the properties and structures on each block, an identification of those properties and structures to be targeted for potential zone projects, and a description of the present use and conditions of the targeted properties and structures;
- Clarify that a development plan include a plan for the development, promotion, and use of a renaissance fund corporation if a renaissance fund corporation is desired to be established;
- Clarify that a development plan include a description of the types of projects the city wants to encourage in the city's targeted properties;
- Provide that a taxpayer must be current on all taxes to be eligible for a tax exemption or credit under the renaissance zone law;
- Expand the investment period for historical credits beyond December 31, 2004;

- Allow a city with a zone of less than 20 blocks to expand up to 20 blocks and allow these expanded blocks to have renaissance zone status for up to 15 years; and
- Allow for the creation of a statewide renaissance fund corporation.

Department of Economic Development and Finance Report

The committee received the Department of Economic Development and Finance annual report, which included the North Dakota Development Fund loan activities, the Agricultural Products Utilization Commission grant activity, a department overview, the department's vision and mission, the department's key strategies, activities of the biennium, department products and services, challenges facing the state, and solutions for the state.

Job Service North Dakota Report

The committee received reports from Job Service North Dakota regarding possible incentives to encourage employees to decrease the length of time employees receive unemployment compensation benefits and regarding possible incentives to encourage negative employers to become positive employers.

House Bill No. 1135 (1999) created a new unemployment compensation trust fund reserve target rate; changed the calculation of unemployment compensation premium rates to an arrayed tax rate schedule that is evenly distributed for positive and deficit account employers; established incentives for employers to manage costs and risks; and required Job Service North Dakota to report to a Legislative Council interim committee.

The committee received information regarding the status of the Unemployment Insurance Trust Fund Reserve; actions being taken by Job Service North Dakota to restore the Unemployment Insurance Trust Fund Reserve balance to the statutorily required level; unemployment compensation premium tax rates since 1997; unemployment compensation claimant benefit history since 1996; and Unemployment Insurance Trust Fund Reserve balance targets.

In working to achieve Unemployment Insurance Trust Fund Reserve solvency, Job Service North Dakota is working on returning claimants to work sooner and encouraging participation of covered employees to control employer cost and manage risk. Testimony was received that as a result of the changes in 1999, the sharp decline in the Unemployment Insurance Trust Fund Reserve of the last several years has been stopped, and the fund is beginning to recover. Additionally, the duration a claimant receives benefits is decreasing in certain instances. Although there has been an increase in claimant duration for employees who return to the former employer, those claimants who are not returning to the former employer have had a

decrease of claimant duration from 11.16 weeks for the period July 1998 through June 1999 to 10.36 weeks for the period July 1999 through June 2000. Testimony indicated that these duration statistics may further improve with an emphasis on reemployment services for claimants and education of Job Service North Dakota staff in interviewing skills, case management, and conflict resolution.

The executive director of Job Service North Dakota may approve a 30 percent tax rate reduction to act as an incentive for deficit account employers if certain conditions are met. In order to qualify for this rate reduction, a deficit account employer must have had three consecutive years of contributions exceeding benefit charges and must have an approved plan outline of significant changes to reduce benefit charges to their account. More than 160 deficit account employers may potentially qualify for this tax rate reduction, but at the time of the report, only one employer had applied for the reduced rate.

Workers Compensation Bureau Reports Safety and Performance Audits

The committee received a report from the Workers Compensation Bureau on the bureau's safety audit of the Roughrider Industries work programs and the bureau's performance audit of the modified workers' compensation coverage program.

The Roughrider Industries modified workers' compensation coverage program was established in 1997 and allowed Roughrider Industries to continue to receive federal funding through the prison industries enhancement program. At the time of the report, since the inception of the account in March 1999, only one claim had been submitted and that claim was for one person with less than \$350 in expenses.

In June 2000 a member of the bureau's safety and loss prevention staff conducted a safety audit of the work program and Roughrider Industries. Roughrider Industries met all the program requirements and the program was operating as intended. Additionally, the inspection showed that Roughrider Industries had made a significant effort toward providing a safe and ergonomically sound workplace for its employees. The Workers Compensation Bureau is not recommending any changes to the modified workers' compensation program in place at Roughrider Industries.

Permanent Partial Impairment Study

The committee received a report from the Workers Compensation Bureau regarding the bureau's study of the awards provided to injured employees with permanent impairments caused by compensable work injuries. The committee reviewed the current workers' compensation permanent partial impairment benefit structure, the advantages and disadvantages of the current law, the permanent partial impairment structure of other states,

considerations and recommendations made as a result of the study, and the fiscal impact of implementing these recommendations. The study recommendations included:

- Retaining the existing method of impairment evaluation;
- Changing the evaluation so it does not include a disability component;
- Modifying the threshold to either 10 or 11 percent;
- Clarifying who qualifies for benefits under the new system;
- Considering a schedule for amputations; and
- Retaining the existing permanent partial impairment benefit rate of 33.3 percent of the state average weekly wage.

The Workers Compensation Board of Directors will determine whether to pursue the recommendations.

Long-Term Disability and Death Benefit Study

The committee received a report from the Workers Compensation Bureau regarding the recommendations from the bureau's study of the benefits available to

persons receiving bureau long-term disability or death benefits. The committee reviewed the existing supplementary benefit structure, advantages and disadvantages of this current law, the supplementary benefit structure in other states, and recommendations and options for the North Dakota system. The study recommendations included:

- Eliminating the different qualifying periods effective August 1, 2006;
- Retaining the current qualifying period of seven years for permanent total disability benefit recipients;
- Applying a supplementary benefit method that treats each permanent total disability or death benefit recipient in a similar manner, based on three options; and
- Reducing the qualifying period for death benefit recipients to the first July after the benefits fall below 60 percent of the state average weekly wage.

The Workers Compensation Board of Directors will determine whether to pursue the recommendations.

CRIMINAL JUSTICE COMMITTEE

The Criminal Justice Committee was assigned three studies. Senate Concurrent Resolution No. 4015 directed a study of the correctional system in North Dakota, including its functions, responsibilities, funding, and operation and the causes of past and projected future increases in the state's adult inmate population, including the impact of sentencing laws. Senate Concurrent Resolution No. 4051 directed a study of criminal offenses throughout the North Dakota Century Code. Senate Concurrent Resolution No. 4048 directed a study of the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses, sentencing of sexual offenders, and sexual offender commitment treatment. The Legislative Council chairman directed the committee to study issues related to public safety and state liability in connection with the interstate transfer of convicted felons.

Committee members were Representatives John Mahoney (Chairman), Curtis E. Brekke, Ron Carlisle, Rachael Disrud, Bruce A. Eckre, G. Jane Gunter, Gerald O. Sveen, Elwood Thorpe, and John M. Warner and Senators Stanley W. Lyson, Carolyn Nelson, Wayne Stenehjem, and Darlene Watne.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

CORRECTIONAL SYSTEM STUDY

State Penitentiary

North Dakota Century Code (NDCC) Section 12-47-01 provides for the establishment of the State Penitentiary. The Penitentiary, which was founded in 1885, is to be located in Bismarck and is the general penitentiary and prison of the state for the punishment and reformation of offenders against the laws of the state. In 1997 Section 12-47-01 was amended to permit the director of the Department of Corrections and Rehabilitation to establish affiliated facilities at other locations throughout the state within the limits of legislative appropriations. The Penitentiary and the immediate surrounding property occupy approximately 200 acres on the eastern outskirts of Bismarck. In addition, the Penitentiary owns or leases approximately 4,400 acres, which includes the Missouri River Correctional Center and other lands used for farming purposes.

The Penitentiary facility is composed of seven units that are used to house male inmates:

1. The North unit (orientation unit) is a maximum security area that contains double bunk-type cells and has a capacity of 66 inmates.
2. The Overflow unit is a medium security area with dormitory-style cells and has a capacity of 31 inmates.

3. The East Cell House, which was built in 1910, is a maximum security unit with single bunk-type cells and has a capacity of 157 inmates.
4. The West Cell House is a maximum security unit that contains single bunk-type cells and has a capacity of 80 inmates.
5. The South unit is a maximum security unit with dormitory-style cells and has a capacity of 60 inmates.
6. The Therapeutic community unit is a medium security, dormitory-style unit and has a capacity of 60 inmates.
7. The Administrative segregation unit is a maximum security unit with single bunk-type cells and has a capacity of 36 inmates.

Other buildings located at the Penitentiary site include a food service building, education building, the administration building, a recreation building, a purchasing and distribution building, the visiting center, power plant, chiller building, old slaughter house, pressing room, program building, dairy barn, wood granary, the Sunny Farm barn, the Roughrider Industries office and warehouse, and a machine storage pole barn.

Pursuant to NDCC Section 12-47-11, the warden, under the direction of the director of the Division of Adult Services, is the person responsible for the custody and control of the Penitentiary, its inmates, and the Penitentiary land, buildings, furniture, tools, implements, stock, provisions, and any other property within the premises of the Penitentiary. The warden is responsible for the policing of the Penitentiary and the discipline of the inmates.

Missouri River Correctional Center

The Missouri River Correctional Center is located eight miles south of Bismarck near the Missouri River, with an additional 1,300 acres known as "Sunny Farm" located south of Mandan. The center has no walls or barriers to contain the inmates and is located in a wooded setting. The institution houses male and female inmates whose sentences are not less than 30 days nor more than one year. The buildings at the center include a manager's residence, male and female inmate housing units, a library, recreation building, vocational education building, industries building, storage barn, auto mechanic classroom, kitchen and dining room, treatment building, equipment repair shop, and various storage buildings. The inmate housing facilities at the center include a minimum security, dormitory-style housing unit for male inmates which has a capacity of 136 inmates. In addition, there is a minimum security, dormitory-style housing unit for female inmates with a capacity of 14 inmates. The administration of the center is under the jurisdiction of the warden of the State Penitentiary, but a manager lives onsite and conducts the day-to-day administration.

Educational programs offered to the inmates of the center include a high school equivalency program, a resident tutoring program, a business education class, welding and automotive programs, carpentry classes, and prerelease and education release programs.

James River Correctional Center

The James River Correctional Center, which is located on the grounds of the State Hospital in Jamestown, was completed for use as a correctional facility in 1998. The James River Correctional Center contains two units for its inmate population. The second floor of the center is a medium security male unit with dormitory-style cells and has a capacity of 160 inmates. The female unit, which is located on the third and fourth floors, is also a medium security, dormitory-style unit and has a capacity of 80 inmates.

Offender Statistics

During the 1997-99 biennium, the offenses (and percentage of inmates) for which male inmates were confined included property crimes (39.4 percent); drug-related (22.5 percent); violent crimes, excluding sexual offenses (18.8 percent); driving under the influence (7.4 percent); sexual crimes (7.3 percent); and other offenses such as bail jumping, escape, and unlawful possession of a firearm (4.6 percent). The offenses (and percentage of inmates) for which female inmates were confined included property crimes (46.2 percent); drug-related (33.8 percent); violent crimes, excluding sexual offenses (16.6 percent); driving under the influence (2.1 percent); and sexual crimes (1.4 percent). No females were confined for other offenses such as bail jumping, escape, and unlawful possession of a firearm.

The average length of sentences for both male and female inmates has decreased over the last three bienniums. During the 1993-95 biennium, the average length of sentence was 45 months for male inmates and 54 months for female inmates; during the 1995-97 biennium, 43 months for male inmates and 44 months for female inmates; and during the 1997-99 biennium, 40 months for male inmates and 38 months for female inmates. The average daily inmate population has increased from 571 in 1994 to 959 in 2000.

Testimony and Committee Considerations

The committee received testimony and reviewed extensive information submitted by the Department of Corrections and Rehabilitation and other state agencies with regard to many aspects of the adult correctional system. The committee's considerations centered on four issues--prison facilities and inmate population; interstate transfer of convicted felons; inmate records; and the Revocation Center.

Prison Facilities and Inmate Population

The committee received statistics and other information regarding the demographics of the inmate population in North Dakota. The testimony indicated that increases in the manufacture and use of methamphetamines, along with street gang activity, have brought in a new breed of younger, more violent, and more culturally diverse inmates. As of June 30, 1999, the inmate population of the Department of Corrections and Rehabilitation Prisons Division was 932, which included 578 inmates at the State Penitentiary; 210 inmates at the James River Correctional Center; and 144 inmates at the Missouri River Correctional Center. The information indicated the largest increases in inmates in recent years has been in the area of drug offenders. Of the 932 inmates, 172 had been sentenced for the delivery, manufacture, or intent to deliver or manufacture drugs, and 34 inmates had been sentenced for simple possession of drugs. The average sentence length for all inmates, as of June 30, 1999, was 39 months; however, the average sentence for violent offenders was 53 months; for sexual offenders, 121 months; and for drug offenders, 55 months.

According to the testimony, approximately half of the inmates are serving sentences of five years or more, and half are serving sentences of less than five years. Mandatory sentences and the 85 percent "truth-in-sentencing" requirement have had an impact on the number of persons incarcerated and the average length of incarceration. Of the 932 inmates, 132, or 14 percent, were serving a mandatory sentence. The mandatory sentence offenses include driving under the influence, drug offenses, aggravated assault, robbery, terrorizing, and murder. Eighty-two inmates are serving time under the 85 percent "truth-in-sentencing" law with an average sentence of 81 months. Each of the three state prison facilities are at full capacity with an additional 15 inmates being housed in county jails. The inmate population has been increasing at a rate of 10 percent per year.

The committee toured the facilities at the State Penitentiary and the James River Correctional Center. During the tour of the James River Correctional Center, the committee received testimony that the number of inmates incarcerated at the center ranges from 217 to 225, of which 44 are women. It was noted that among the concerns for the facility are the lack of programming and the level of staffing, both of which will be addressed in the next budget process.

According to the testimony, plans have been developed for the possible renovation of another State Hospital building that, if renovated, would be used to house the female inmates at the James River Correctional Center. It was estimated it would cost \$2 million to renovate the existing building and \$3 million to construct an entirely new structure. If the proposed women's facility becomes a reality, the female inmates from the Missouri River Correctional Center would also be housed in that facility. The separate women's facility

would also house all the women's programs, including the medical, recreational, and educational programs. A separate women's facility would keep the female and male inmates separated at all times except when working at Roughrider Industries. Moving all female inmates to one facility would make more beds available for male inmates at the Bismarck and Jamestown locations.

The committee received testimony on an alternative to adding more beds to the state's prison facilities, which would be to develop a transitional community program that would be used during the last six months of incarceration. If implemented, the program would most likely be based in Fargo or Bismarck and could handle 40 to 50 inmates at a time. The program would be operated by a private company and would involve state's attorneys, the courts, and the community. While an employment release program is part of the transition process at the Missouri River Correctional Center, the proposed transitional community program would be a whole treatment program.

Interstate Transfer of Convicted Felons

By Legislative Council chairman directive, the committee was authorized to study issues related to public safety and state liability in connection with the interstate transfer of convicted felons.

On October 13, 1999, Kyle Bell, a convicted felon, escaped near Santa Rosa, New Mexico, while being transported from the State Penitentiary to a facility in Oregon. TransCor, Inc., was the company hired to transport Kyle Bell to the new location. Kyle Bell was able to escape from the transport bus and remained at large until he was recaptured in Texas on January 9, 2000. As a result of the escape, issues were raised concerning the prisoner placement and transportation procedures and policies of the Department of Corrections and Rehabilitation and the use of transport companies for transporting prisoners.

The committee received extensive testimony regarding the prisoner placement and transportation policies and procedures of the Department of Corrections and Rehabilitation, both generally and with regard to the Kyle Bell case. A reciprocity agreement, known as the Interstate Compact Agreement, provides for cooperation between North Dakota and other states for the exchange of prisoners. The decision to house a prisoner in another state is made by the warden. In the Kyle Bell case, the warden determined that for security and safety reasons it would be in the institution's and the state's best interest that Kyle Bell be housed in a maximum security prison in another state.

In 1996 the department began utilizing private prisoner transport companies, principally TransCor America, Inc., based upon research that identified TransCor as being professional, experienced, and the largest of prisoner transport companies. Correctional authorities in

other jurisdictions identified TransCor as the best in the field. The department used TransCor to transport two inmates in 1996, five inmates in 1998, and six inmates in 1999. Before the escape of Kyle Bell, the department had not experienced any problems with TransCor and was not aware that TransCor had any incidents of inmate escapes.

An internal review on the procedures and policies used for transporting prisoners indicated the Department of Corrections and Rehabilitation's policies and rules were not lacking and that the department runs a secure, competent, and efficient operation. It was noted that there were some communication failures between the department and TransCor regarding whether it was clear to TransCor that Kyle Bell was to be considered an escape risk. The review indicated the department's procedures should be reviewed continually as new correctional, housing, and transport practices are adopted. The internal review also found that the utilization of private prisoner transport companies is common for all levels of government corrections nationwide and is cost-effective, prudent, and efficient.

The department reported that as a result of the Kyle Bell escape and the internal review, several policies and procedures were changed. According to the testimony, the department immediately suspended the use of TransCor for transporting prisoners. In addition, transported prisoners must be transported in orange jumpsuits and tennis shoes. Prisoners are no longer allowed to wear their own shoes during the transport. The department will conduct the highest-level search before prisoners leave the Penitentiary, and no personal items, such as clothes, shoes, or medications, will be permitted on any prisoner. The department will provide the transport company with full written documentation of the prisoner's history, crimes, and escape attempts, and the department will use a formal written contract for transporting prisoners. It was noted that a need exists for a "sallyport" at the Penitentiary for prisoner transfers and that the parking lot at the Penitentiary is not conducive to prisoner transports.

The internal review also indicated that TransCor had the appropriate policies in place and that, if followed, would have precluded Kyle Bell's escape. The review found that TransCor had failed to follow its policies regarding the required number of guards during the transport, the awakening of guards during stops, prisoner headcounts during stops, use of interconnecting chains linking prisoners, positions of guards on the bus during stops, and the number of guards awake during movement of the vehicle.

During the course of the committee's review of the interstate transporting of prisoners, several committee members toured the TransCor facilities in Nashville, Tennessee. The members reported that as a result of the Kyle Bell escape, the company had changed some of its training policies, including increasing its training

requirements from 40 hours to 80 hours. In addition, TransCor planned to install alarms on the emergency hatches on the ceilings of its buses and use black boxes for certain prisoners.

The committee also received testimony regarding the notification protocol in the case of an out-of-state prisoner escape. Several committee members raised concerns as to why the North Dakota Bureau of Criminal Investigation and the United States Marshal Service were not immediately notified of the escape. According to the testimony, the Governor's office was the lead agency in the investigation because of the profile of the individual and because of the sense of urgency. It was noted there was a sharing of information among the agencies involved, and the main focus among all agencies was the capture of the escaped felon. The testimony indicated the notification should include the warden or director of the Department of Corrections and Rehabilitation, the Governor's office, sister state authorities, the Highway Patrol, the Bureau of Criminal Investigation, local authorities, and the media.

Finally, the committee received testimony regarding statutes of other states and proposed federal legislation regarding the interstate transportation of prisoners. Colorado requires local authorities to be notified when a vehicle transporting prisoners enters a state, and if any prisoner escapes during transport due to the negligence of the contracting company, the company is liable for all actual costs incurred by the state in recapturing the escaped prisoner and all actual damages caused by the escaped prisoner while at large. Iowa imposes training requirements for persons who transport prisoners, including training and proficiency in the safe use of firearms and appropriate transportation procedures. The Florida Department of Corrections is authorized to contract with private transport companies for the transportation of the state's prisoners both within and outside the state. The transport company is to be considered an independent contractor and is solely liable for the prisoner while the prisoner is in the custody of the company. The transport company and its employees are required to possess certain private investigative and private security licenses. Finally, the Florida Department of Corrections is required to advertise for and receive competitive bids for the transportation of prisoners and to award the contract to the lowest and best bidder.

In November 1999, Senators Dorgan, Ashcroft, and Leahy introduced S.1898 in the United States Senate. The "Interstate Transportation of Dangerous Criminals Act of 1999" or "Jeanna's Act," was intended to "provide protection against the risks to the public that are inherent in the interstate transportation of violent prisoners." The bill provides that the Attorney General is to adopt regulations relating to the transportation of violent prisoners in or affecting interstate commerce. The bill also provides that the regulations must include minimum standards for persons involved in the transporting of prisoners, including background checks and preemployment drug

testing for potential employees; minimum standards for factors that disqualify employees similar to standards required of federal corrections officers; minimum standards for the length and type of training that employees must undergo before they can perform this service; restrictions on the number of hours that employees can be on duty during a given time period; minimum standards for the number of personnel that must supervise violent prisoners; minimum standards for employee uniforms and identification; standards requiring that violent prisoners wear brightly colored clothing clearly identifying them as prisoners; minimum requirements for restraints used when transporting violent offenders; notification of local law enforcement of stops within their jurisdictions; minimum standards for the markings on conveyance vehicles; notification requirements upon the escape of a prisoner; and minimum standards for the safety of violent prisoners. The bill provides for a civil penalty of \$10,000 plus the costs of prosecution for each violation of the regulations. The bill passed the Senate on October 25, 2000, and has been referred to the House Committee on the Judiciary.

Inmate Records

During the course of the committee's study of the interstate transfer of convicted felons, the issue of whether Kyle Bell's location following his recapture could be released was raised. North Dakota Century Code Section 12-59-04 provides that all Department of Corrections and Rehabilitation records, including preparole reports and supervision history, are confidential. A February 2000 Attorney General's opinion indicated that this section, although it was located in a chapter dealing with the Parole Board, applied to all records of the Department of Corrections and Rehabilitation and that all inmate records were confidential.

The committee considered a bill draft that would have provided that the medical, psychological, and social records of an inmate are confidential, but records with respect to an inmate's identity, location, criminal convictions, or projected date of release are open records. The bill draft also clarified that parole records of the department are confidential. Testimony regarding the bill draft indicated there are circumstances under which an inmate's identity or location should remain confidential, such as in the case of an inmate who is being held in protective custody. According to the testimony, there are situations when, because of the nature of the crime, the department is unable to keep an inmate safe in the system and for those situations, certain information regarding the inmate should be confidential. It was also noted that to allow certain inmate records to be open records could result in potential danger to the prison staff. Testimony in support of the bill draft indicated that the bill draft clarifies that records that have traditionally been closed, e.g., medical, social, and psychological records, remain confidential, but information that has traditionally been public remains public information.

According to the testimony, secret prisons are not good for democracy.

The committee also considered a bill draft that created a new classification of inmate records, known as case history records, that would be considered exempt. North Dakota Century Code Section 44-04-17.1 provides that exempt records may be released at the discretion of the department. The bill draft also provided that medical, psychological, and social records are confidential. The bill draft further provided that records with respect to the person's identity, location, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records. Finally, the bill draft clarified that parole records of the department are confidential. Testimony in support of the bill draft indicated the bill draft would allow the department to communicate with inmate families, the media, and other interested parties regarding inmate matters in which the department regards disclosure as appropriate or necessary. The committee recognized there are circumstances when certain information regarding an inmate should be confidential; however, the burden should be on the Department of Corrections and Rehabilitation to explain why the information cannot be made public.

Revocation Center

The committee received testimony regarding the Revocation Center program. The Revocation Center program was presented to the 56th Legislative Assembly as one of the programs the Department of Corrections and Rehabilitation would implement as an "alternative to incarceration." The department presented a program of "alternatives to incarceration" at a cost of \$2 million compared to a cost of \$4.8 million to house the number of inmates that would be diverted from prison by the alternatives to incarceration program. The Revocation Center program was presented to the Legislative Assembly as an intense 60-day alcohol and drug treatment and cognitive restructuring program for primarily nonviolent, first-time probation-revoked offenders and for some first-time offenders.

The Revocation Center program is jointly provided by the Department of Corrections and Rehabilitation, the State Hospital, and the Stutsman County Correction Center and is housed at the Stutsman County Correction Center. The goals of the program are to reduce an offender's risk to the community and to reduce the prison reincarceration rate. The program design is to address not only the offender's addiction problem but also to help change the offender's criminal way of thinking through cognitive restructuring programming.

During 1999, 113 offenders successfully completed the program. It was reported to the committee that, of the 113 discharged from the program to the community, 82.3 percent remain successful in the community, and 17.7 percent have been returned to prison for not

complying with release conditions. During 1999 the program saved 6,512 prison days, which translates into a reduction of 70 prison beds needed by the fourth quarter of 1999. According to the testimony, the program has been very effective in both cost-savings and reduced incarceration rates of offenders.

The committee received testimony that a number of concerns have arisen regarding the program. One issue is whether the Revocation Center is being used for offenders beyond legislative authorization. According to the testimony, some state's attorneys believe the program was approved only for offenders who were about to have their probation revoked, not for offenders who were sentenced to prison. According to the testimony, the department discussed with the Legislative Assembly the criteria for which offenders would be eligible for the program, and the criteria included offenders who were sentenced to prison for the first time as well as probation-revoked offenders.

Another issue of concern was the criteria for Revocation Center eligibility. The testimony indicated a concern among state's attorneys regarding offenders who had multiple felonies on their records or who had mandatory drug sentences. According to the testimony, there have been a few offenders selected to participate in the program who state's attorneys considered to be poor choices. To resolve the issue, the department acknowledged that a better exchange of information with judges and state's attorneys would help alleviate this concern.

Another issue of concern was that state's attorneys were not being notified of offenders being placed into the program. According to the testimony, the department now contacts both the state's attorney and the judge involved in an offender's case before placing the offender in the program.

Another issue of concern was the need to focus more on punishment. A primary concern of the state's attorneys was that offenders were only spending 90 to 120 days in prison before being released into the community. According to the testimony, state's attorneys did not believe this to be adequate punishment, especially in some cases when other offenders sentenced to jail at the local level with lesser offenses serve more time in the county jail than a Revocation Center participant spends in prison. To resolve this concern, the testimony indicated the department is making some changes on a case-by-case basis, and early discussion with the state's attorneys about each case would also assist in resolving this concern.

Another issue of concern was that mandatory sentences are being subverted by the department and the Parole Board. According to the testimony, state's attorneys are concerned about mandatory-sentenced drug cases that had been approved by the Parole Board for participation in the program. These cases, which otherwise met the criteria for participation in the program, were flagged by the department for the Parole

Board's consideration. To address these concerns, the department changed its procedures. According to the testimony, cases that are mandatory sentences will be reviewed by the Parole Board only when the cases would normally come before the board.

Another issue of concern was that a person is sentenced based on the severity of the crime and that person should serve at least the majority of that sentence in prison. It was suggested that offenders should serve 50 percent of their sentences at the Penitentiary before being allowed to participate in the Revocation Center program.

Recommendations

With respect to the interstate transfer of convicted felons, the committee concluded the notification process protocol of a prisoner escape is an administrative issue best handled by policy, and legislative involvement is not needed. The committee also concluded that the Governor's task force handled the Kyle Bell situation well, that the Department of Corrections and Rehabilitation was not at fault, and that whether a private company should be used for the transporting of prisoners was not an issue within the scope of the committee's assignments.

The committee makes no recommendation regarding the interstate transfer of convicted felons.

With respect to the Revocation Center program, the committee expressed concerns that the program does not appear to be working as the Legislative Assembly recommended. The committee recommended the department work with the state's attorneys and judges to address the concerns. If the concerns are not addressed, there may be a need for legislative changes.

The committee recommends House Bill No. 1044 to provide for a new classification of inmate records, known as case history records, that would be considered exempt; provides that medical, psychological, and social records are confidential; and that records with respect to the person's identity, location, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records. The bill draft also provides that parole records of the department are confidential.

CRIMINAL OFFENSES CLASSIFICATION STUDY

Senate Concurrent Resolution No. 4051 directed a study of the classification of criminal offenses throughout the North Dakota Century Code. The testimony on Senate Concurrent Resolution No. 4051 indicated that a proper classification of offenses would provide for equitable punishment based upon the elements of the offense committed and that the appropriate classification of offenses may result in more efficient use of the state's resources in determining levels of punishment, rehabilitation, and the appropriate alternatives to incarceration.

Background

In North Dakota, classification of criminal offenses commences with the Constitution of North Dakota. Section 7 of Article I of the Constitution provides that "[e]very citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor." Section 10 of Article I of the Constitution of North Dakota refers to the term "felony" and provides that no person shall be proceeded against for a felony except by indictment, until another procedure is provided by law.

Section 11 of Article XI of the Constitution of North Dakota provides that "[a]ll officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law."

Section 11 of Article I of the Constitution of North Dakota dealing with bail for criminal offenses refers to "capital offenses" which need not be bailable if proof of commission "is evident or the presumption great."

The statutory classification of crimes in North Dakota is primarily contained in NDCC Title 12.1; however, a number of felonies, misdemeanors, and infractions can be found throughout the Century Code.

During the 1971-72 interim, the Legislative Council's Judiciary "B" Committee was assigned to review and revise the substantive criminal statutes of North Dakota. The committee recommended a bill that created a new criminal code that defined and classified criminal offenses, provided defenses to criminal charges, and delineated sentencing criteria. The bill abolished the death penalty, eliminated mandatory sentences, restricted the use of deadly force in apprehending alleged criminals, and consolidated theft laws. The bill was enacted by the 43rd Legislative Assembly.

During the 1973-74 interim, the Legislative Council's Judiciary "A" Committee continued the substantive and formal study and revision of the criminal statutes. As a result of this study, the committee recommended a bill that amended the Criminal Code enacted in 1973, created an offense classification known as an infraction, clarified certain offense definitions, expanded the instances wherein the use of force by peace officers is justified, and created a separate fine schedule for business organizations. The bill also made several changes in the sentencing code. The bill was enacted by the 44th Legislative Assembly.

During the 1987-88 interim, the Legislative Council's Judiciary Committee studied the criminal sentencing statutes in misdemeanor and felony cases. The committee recommended a bill to consolidate NDCC Chapter 12-53 relating to suspended execution of

sentences with Chapter 12.1-32, which provides for the classification of offenses, penalties, and a broad array of sentencing alternatives available to the court. The bill was also intended to address conflicts and inconsistencies existing in the sentencing statutes. The bill was enacted by the 51st Legislative Assembly.

Testimony and Committee Considerations

Statutory provisions governing criminal classifications are primarily contained in NDCC Title 12.1 with sentencing in misdemeanor and felony cases primarily contained in Chapter 12.1-32; however, criminal classifications can be found throughout the Century Code. There are 382 offenses classified as Class A misdemeanors, 358 classified as Class B misdemeanors, and 151 classified as infractions.

The committee received testimony from several state's attorneys who indicated that there were not any gross inequities in the punishment of criminal offenders which would require a codewide comparison of offenses. It was suggested the committee be extremely cautious before reclassifying any criminal offense because well-meaning amendments may have unintended consequences, consume valuable resources, and lead to more problems.

The committee received testimony regarding a concern over NDCC Section 39-21-46, which deals with motor carrier safety. This section makes a violation of the section an infraction, which is a criminal offense. According to the testimony, problems have arisen when citations are issued for violations of the offense and offenders are asked, on the spot, to sign a document that states the person agrees to plead guilty and to forfeit bond. The problem is that law enforcement officers are providing legal advice and are asking persons to waive their constitutional rights. There could potentially be liability on the part of the officer for violating the person's civil rights. It was suggested the offense should be made a noncriminal traffic offense punishable with a fine. This would decriminalize the offense, but violators could still be cited for violations.

The committee also reviewed several criminal classifications in the state's sexual offense statutes. The committee reviewed NDCC Section 12.1-20-04, relating to sexual imposition. Section 12.1-20-04 makes the offense a Class C felony unless the victim is under 15 years of age in which case the offense is a Class B felony. The committee received testimony that the statute is typically used in "date rape" situations, and it was suggested that this type of offense warrants Class B felony status.

The committee reviewed NDCC Section 12.1-20-05 regarding the solicitation of minors. Under subsection 2 of this section, an adult who solicits a person under the age of 15 to engage in a sexual act is guilty of a Class A misdemeanor. The committee, as part of its sexual offender study, received testimony regarding the need

for an offense regarding the luring of minors by computer, and a Class C felony as a penalty was suggested for that crime. Because the elements of solicitation of minors and luring of minors by computer were similar, it was suggested that if the luring of minors by computer crime was enacted, the penalties for the two crimes should be comparable.

The committee also received testimony regarding NDCC Section 12.1-20-12.1 relating to indecent exposure, which is described under **SEXUAL OFFENDER STUDY, Testimony and Committee Considerations, Miscellaneous Sexual Offense Statutes.**

According to testimony from state's attorneys, there is a concern about the "resentencing" that occurs after a person has been sentenced by a judge. Several examples of situations in which a person sentenced by a judge to serve a certain length of time were cited. In one situation, a repeat offender who was sentenced to 18 months by a judge served only three months in prison before being paroled into the community. While the need for the Parole Board's involvement is understood, the testimony indicated that state's attorneys object to significant reductions in a criminal sentence without any serious consideration of the opinions of the law enforcement agency, the prosecuting attorney, and the court involved in the case.

Conclusion

The committee makes no recommendation regarding this study; however, the suggestions discussed above regarding the changes to the classifications of sexual offenses are included in the bill recommended as a result of the sexual offender study.

SEXUAL OFFENDER STUDY

Background

Sexual Offender Statutes

Crimes for sexual offenses are contained in NDCC Chapter 12.1-20. Under Section 12.1-20-01, if a victim of a sexual offense is under the age of 15, it is not a defense that the offender thought the victim to be older. If the victim is 15, 16, or 17 years of age, however, it is an affirmative defense that the offender reasonably believed the victim to be an adult.

North Dakota Century Code Section 12.1-20-02 defines "sexual act" and "sexual contact." The term "sexual act" includes certain defined sexual contacts. The term "sexual contact" is broadly defined to include any touching of the sexual or intimate parts of another for arousing or satisfying sexual or aggressive desires. Generally, the certain sexual contacts contained in the definition of sexual act are punished more severely than sexual contacts as broadly defined.

North Dakota Century Code Section 12.1-20-03 defines "gross sexual imposition." The crime of gross sexual imposition is categorized by whether a sexual act or a sexual contact was performed. Under the statute,

gross sexual imposition that results from a sexual act includes:

1. A forced victim (Class A felony).
2. An unknowingly intoxicated or drugged victim (Class B felony; Class A felony if there is serious bodily injury).
3. An unknowing victim (Class B felony; Class A felony if there is serious bodily injury).
4. A victim under 15 years of age (Class A felony).
5. A victim with a mental disease or defect (Class B felony; Class A felony if there is serious bodily injury).

Under the statute, gross sexual imposition that results from sexual contact includes:

1. A victim under 15 years of age (Class B felony; Class A felony if there is serious bodily injury).
2. A forced victim (Class B felony; Class A felony if there is serious bodily injury).

North Dakota Century Code Section 12.1-20-03.1 defines the crime of "continuous sexual abuse of a child" as a combination of three or more sexual acts or sexual contacts with a minor under the age of 15 years during a period of three or more months. This crime is a Class A felony.

Under NDCC Section 12.1-20-04, the crime of "sexual imposition" is defined as a sexual act or contact as a result of a threat that would render a person of reasonable firmness incapable of resisting. The crime is a Class C felony; however, if the victim is 15, 16, or 17 years of age, the crime is a Class B felony.

Under NDCC Section 12.1-20-05, the crime of "corruption or solicitation of minors" is defined as a sexual act by an adult on a victim who is 15, 16, or 17 years of age. The crime is a Class A misdemeanor; however, if the offender is at least 22 years of age, the crime is a Class C felony. The solicitation of a sexual act or contact with a victim under 15 years of age is a Class A misdemeanor.

North Dakota Century Code Section 12.1-20-06 defines the crime of "sexual abuse of wards" as a sexual act performed on a victim in official custody by an offender with supervisory or disciplinary authority over the victim. This crime is a Class A misdemeanor.

Under NDCC Section 12.1-20-07, the crime of "sexual assault" is defined as sexual contact that is:

1. Offensive to the victim (Class B misdemeanor).
2. On a victim with a mental disease or defect (Class C felony).
3. On an unknowingly intoxicated or drugged victim (Class C felony).
4. On a victim in official custody by an offender with supervisory or disciplinary authority over the victim (Class A misdemeanor).
5. On a victim who is 15, 16, or 17 years of age and the offender is a parent or guardian (Class C felony).
6. On a victim who is 15, 16, or 17 years of age and the offender is 18 years of age or older

(Class C felony if the offender is 22 years of age or older; Class A misdemeanor if the offender is 18, 19, 20, or 21 years of age).

There are other NDCC Chapter 12.1-20 sexual offenses; however, they do not interrelate in the same manner as the sexual offenses previously listed. The other sexual offenses include Section 12.1-20-06.1 - Sexual exploitation by a therapist; Section 12.1-20-08 - Fornication; Section 12.1-20-09 - Adultery; Section 12.1-20-10 - Unlawful cohabitation; Section 12.1-20-11 - Incest; Section 12.1-20-12 - Deviate sexual act; Section 12.1-20-12.1 - Indecent exposure; and Section 12.1-20-13 - Bigamy. The remainder of Chapter 12.1-20 contains evidentiary rules and the crime of transferring body fluid that may contain the human immunodeficiency virus.

Under NDCC Chapter 12.1-32, there are specific provisions for the sentencing of sexual offenders. Section 12.1-32-02 provides that before sentencing a defendant on a felony charge for gross sexual imposition, continuous sexual abuse of a child, incest, or certain sexual performances by children, the court must order a presentence investigation and a presentence report. This section requires a risk assessment in presentence investigations of individuals charged with gross sexual imposition.

Under NDCC Section 12.1-20-03.1, a court may not defer imposition of sentence or suspend any part of a sentence for the continuous sexual abuse of a child unless the offense was the defendant's first violation of Chapter 12.1-20 and there are extenuating circumstances that justify a suspension.

North Dakota Century Code Section 12.1-32-04 provides that a court is prohibited from deferring imposition of sentence for gross sexual imposition on a victim under 15 years of age in cases in which the defendant cannot prove by clear and convincing evidence that the defendant reasonably believed the victim was 15 years of age or older.

Under NDCC Section 12.1-32-06.1, a court may impose an additional period of probation not to exceed five years for a person found guilty of a felony sexual offense against a minor which is a gross sexual imposition, sexual imposition, or incest if the additional period of probation is in conjunction with sexual offender treatment. If a person is guilty of a misdemeanor sexual offense that is a corruption or solicitation of a minor, a sexual abuse of a ward, or a sexual assault, the court may impose an additional period of up to two years if in conjunction with sexual offender treatment.

North Dakota Century Code Section 12.1-32-08 provides that a court may require the defendant to pay the prescribed treatment cost for a victim of a sexual offense.

Under NDCC Section 12.1-32-09.1, a person who is convicted of and receives a sentence of imprisonment for forcible gross sexual imposition or other certain

crimes is not eligible for release from confinement until 85 percent of the sentence imposed has been served.

Under NDCC Section 12.1-32-15, a person who commits a crime against a child or who is a sexual offender is required to register in the county in which the person resides. This section requires the release of registration information if a law enforcement agency determines that a sexual offender is a public risk and registration information is necessary for public protection.

A sexual offender is defined as a person who has pled guilty or has been found guilty of NDCC Sections 12.1-20-03 (gross sexual imposition); 12.1-20-03.1 (continuous sexual abuse of a child); 12.1-20-04 (sexual imposition); 12.1-20-05 (corruption or solicitation of minors); 12.1-20-06 (sexual abuse of wards); 12.1-20-07 (sexual assault); 12.1-20-11 (incest); 12.1-22-03.1 (surreptitious intrusion); or Chapter 12.1-27.2 (sexual performance by children).

Civil Commitment of Sexually Dangerous Individuals Statutes

The 1997 Legislative Assembly enacted NDCC Chapter 25-03.3, which establishes a judicial procedure for the civil commitment of sexually dangerous individuals, similar to the procedure for the commitment of mentally ill individuals. Section 25-03.3-01 defines a sexually dangerous individual as one who has:

[S]hown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others.

Under NDCC Chapter 25-03.3, sexually predatory conduct is conduct that is similar to the conduct required for the crime of gross sexual imposition. Chapter 25-03.3 provides that the burden of proof for commitment is clear and convincing evidence and that the person to be committed has the right to counsel, to be present, to testify, and to present and cross-examine witnesses. If a person is found to be a sexually dangerous individual, the court commits that person to the care, custody, and control of the executive director of the Department of Human Services. The executive director has the duty to place the sexually dangerous individual in an appropriate facility or program at which treatment is available. Unless the sexually dangerous individual is already in the custody of the Department of Corrections and Rehabilitation, the executive director may not place the individual at the State Penitentiary or affiliated penal facilities.

The court must release the individual once the individual is no longer sexually dangerous. Each committed

individual must have an examination of that individual's mental condition at least once a year. In addition, once a year the executive director must give written notice of the right to petition for discharge to the committed individual. If the committed individual files a petition for discharge and has not had a hearing during the preceding 12 months, the committed individual must receive a hearing.

Testimony and Committee Considerations

The goals of the study were to review sections of the Century Code which relate to sexual offenses, the sentencing of sexual offenders, and the sexual offender commitment treatment. The committee's considerations centered on five main areas: the civil commitment of sexually dangerous individuals; age differentials in sexual offender statutes; adultery and unlawful cohabitation statutes; luring of minors by computer; and miscellaneous sexual offense statutes.

Civil Commitment of Sexually Dangerous Individuals

The committee received testimony regarding the need for some amendments to the state's civil commitment of sexually dangerous individuals statutes. The law establishes a judicial procedure for the commitment of mentally ill individuals. For commitment to occur, the state's attorney, as petitioner, must show the individual has engaged in further acts of sexually predatory conduct, making the individual a danger to the physical or mental health or safety of others. The commitment is to the Department of Human Services for treatment in the least restrictive environment. Commitment continues until the individual is safe to be at large and has received the maximum benefit of treatment. A statute similar to the North Dakota law was challenged before the United States Supreme Court on substantive due process, double jeopardy, and ex post facto grounds in 1997 and was found to be constitutional. The North Dakota Supreme Court reviewed the North Dakota law in 1999 on the issue of double jeopardy and found the statute constitutional.

The committee received testimony that indicated that as the result of the civil commitments that have been made in the state, a number of areas have been discovered in which adjustments could be made to the statute. According to the testimony, a study group composed of representatives of the affected entities, including the Attorney General's office, the State Hospital, and state's attorneys, was formed to review the civil commitment statutes. It was noted the study group had consulted with the treatment staffs of the Department of Corrections and Rehabilitation, with the Department of Human Services, and with the Protection and Advocacy Project to learn of any concerns those agencies may have with the inclusion of the mentally retarded in the civil commitment statute.

The first area of concern was the definition of sexually dangerous individual. North Dakota Century Code Section 25-03.3-01(7) excludes an individual with mental retardation from the definition. According to the testimony, the exclusion of individuals with mental retardation creates a dangerous situation that arises when an individual who is charged with gross sexual imposition or a similar sexual offense is found to lack fitness to proceed at trial. If the individual charged is a mentally retarded person, the proceedings must be dismissed against this individual. It was suggested that if the definition were amended to eliminate the exclusion of mentally retarded individuals, the remainder of the commitment process, with some minor adjustments, would provide for a process of commitment for mentally retarded persons. If found to meet the criteria for commitment, a court would commit the individual to the care, custody, and control of the Department of Human Services. Depending on the level of mental retardation, the individual could be placed in the Developmental Center at Westwood Park's treatment program or in the State Hospital.

The second area of concern was the venue provisions of NDCC Section 25-03.3-02, which require the commitment proceeding to be held in the county in which the respondent resides or is located. The suggestion was to broaden venue to allow a commitment proceeding to be held in any appropriate county in which the respondent has had or intends to have a presence. The change was suggested as a result of venue issues that had arisen when an inmate who is due to be released and who has been referred by the Penitentiary states an intent to reside in a different county from the county in which the inmate resided at the time of entering the Penitentiary.

A third concern involved the detention of respondents under NDCC Section 25-03.3-08, which provides that the respondent is to be detained at a treatment facility for a 72-hour period before the probable cause hearing. Because of the lack of treatment facilities in small communities, it was suggested the law be amended to provide that the respondent be taken into custody and transferred to a local treatment facility "or correctional facility" to be held pending the probable cause hearing.

The fourth area of concern involved the closed and open proceedings under NDCC Sections 25-03.3-11 and 25-03.3-13. According to the testimony, the hearings should be closed and the records sealed because of the sensitive nature of the information released during a commitment hearing. The results of the commitment proceedings, however, to the extent that an individual is committed, need not be confidential.

A fifth area of concern was the maximum of 30 days between the probable cause hearing and the commitment hearing provided for in NDCC Section 25-03.3-13. According to the testimony, 30 days is not enough time to gather the necessary material and to complete the psychological evaluations and risk assessments. A time

period of 60 or 90 days was suggested as being workable and would not unduly infringe on the respondent's rights.

The sixth area of concern was with regard to commitments under plea bargains under NDCC Section 25-03.3-14. According to the testimony, concerns have been raised about individuals who are being civilly committed to a sexual predator treatment program under a plea agreement in which the criminal sentence is deferred or suspended while the individual is under commitment. The underlying concept of the civil commitment statute is that a sexual offender who is under a criminal indictment, whenever possible, should be committed to a correctional facility rather than be offered a plea agreement that could result in civil commitment as an option to the criminal sentence. According to the testimony, state's attorneys thought it would be inadvisable to prohibit through legislation such a plea agreement as there may be unusual situations when it is necessary and appropriate. The testimony indicated the concerns regarding plea agreement need not be addressed legislatively but rather could be addressed by further educating state's attorneys and judges on the civil commitment statute and by distributing a protocol to state's attorneys that emphasizes criminal prosecution.

The seventh area of concern involved assessments and referrals from the Penitentiary. The testimony indicated there is a need for a more complete assessment by the Penitentiary of individuals who may be referred to a state's attorney for possible commitment. It was also noted more information should be included in the referral letter the Penitentiary sends to state's attorneys for civil commitment of a prisoner who is about to be released.

The final area of concern involved the need for a transitional process for releasing individuals into the community. According to the testimony, a transitional process could be adopted through legislation or through the rulemaking process.

The committee considered a bill draft that provided for changes to the state's civil commitment of sexual predators statutes contained in NDCC Chapter 25-03.3. The bill draft provided for the inclusion of individuals with mental retardation under the civil commitment procedures of the chapter by amending the definition of sexually dangerous individuals. The bill draft also included changes to numerous other sections of Chapter 25-03.3 to provide that individuals with mental retardation receive due process during the commitment proceedings, including the appointment of a guardian ad litem for an individual with mental retardation; the provision that the right to counsel may not be waived; notice requirements; and the appointment of an expert to perform an evaluation on behalf of the respondent. The bill draft also provided for expanded venue for bringing a petition; confidentiality of the petition and all proceedings, but the result of the commitment proceeding and the discharge from treatment would be open records; an assessment

and referral process to be used by the Department of Corrections and Rehabilitation for inmates who have been convicted of an offense that involves sexually predatory conduct; detention of an individual in a local correctional facility; admission of certain evidence to establish probable cause which otherwise may not be admitted at a commitment hearing; and provided for an increase from 30 days to 90 days the time period during which the commitment proceeding must be held.

Testimony in support of the bill draft indicated the amendments to NDCC Chapter 25-03.3 would assist state's attorneys, the courts, the Department of Corrections and Rehabilitation, and the State Hospital in carrying out their duties and responsibilities under the civil commitment statute and would assist in achieving a more effective and efficient implementation of the goals of the statute. Other testimony regarding the bill draft indicated that there are concerns over the referral process in the bill draft and that it may increase the number of referrals and thereby increase the growth of the program at the State Hospital. According to the testimony, the State Hospital anticipates an increase of 12 beds for the sexual offender treatment program during the 2001-03 biennium.

The committee also received testimony from representatives of the Protection and Advocacy Project regarding the bill draft. According to the testimony, a number of interested persons had formed a task force to review the bill draft and the state's civil commitment statutes. The testimony indicated additional changes to NDCC Chapter 25-03.3 should be included in the bill draft to increase the likelihood that a committed individual will get appropriate treatment and be released from a residential facility to rejoin the community with appropriate supervision. The proposed changes to the bill draft included adding a definition of mental retardation; clarifying that mental retardation does not cause any individual to engage in sexually predatory conduct; authorizing judges to appoint a nonattorney "special advocate" to help a victim, witness, or respondent with mental retardation to understand the proceedings and to better participate in the proceedings; continuing the ban on detaining a respondent in jail but providing the option of detaining a respondent in a secure local treatment facility before the preliminary hearing; improving notice to a respondent and the respondent's decisionmakers; establishing individualized treatment teams to develop, review, and revise an individual's treatment plan; identifying the rights that apply to a respondent or committed individual; articulating a committed individual's right to have a court review of any transfer to a more restrictive treatment setting; increasing the standard time allowed for an evaluation from 30 to 45 days; and granting rule-making authority to the Department of Human Services to implement the chapter. Concerns were raised by committee members that the additional proposed changes are substantial steps beyond what the

committee had originally considered and that the more things are defined in statute, the more open the law will be to litigation. The committee agreed to incorporate into the bill draft a reference to the definition of mental retardation in the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition; to include proposed changes to the definitions of respondent and treatment facility; and to provide for rulemaking authority. The committee recommended the Attorney General and the task force work together to resolve some of the task force's concerns before the legislative session.

Age Differentials in Sexual Offender Statutes

The committee received testimony that many of the sexual offenses contained in the North Dakota Century Code are interrelated and that the age of the victim often determines the crime and penalty. Many of the crimes in NDCC Chapter 12.1-20 are classified as crimes because the victim is under age 18, but the penalty is more harsh when the victim is under age 15. In those cases, the lack of knowledge of the victim's age is not a defense. Consent and conduct are important elements of many of the sexual offenses. Sexual offense statutes are not intended to legislate morals but rather to establish a strong public policy against certain types of sexual behavior. Problems arise in enforcing the sexual offender statutes when both parties are minors or when the two parties to the sexual act are near a certain age. There is often a problem as to where to draw the line. One option may be to set new age limits or age differentials. In some states, instead of using an actual age, the statutes look at the difference in ages between the two parties, such as "more than three years." Other options would be to establish new sentencing or case diversion statutes or to adjust the crimes and penalties depending on the parties' ages. The testimony indicated there is a concern about predatory conduct among minors.

The committee also received testimony regarding the state's compliance with the federal Wetterling Act. Under that law, a state may not permit any sexual offender to be exempt from registration. Some alternatives to the current law may be to use age differentials instead of actual ages. Under this option, certain behavior would no longer be classified as criminal, thus obviating the need for prosecution or registration. It was noted the state is at risk of losing up to 10 percent of its federal funds, approximately \$200,000, if it fails to comply with the Wetterling Act. The committee received testimony that the United States Department of Justice had announced that North Dakota was in compliance with the Wetterling Act.

The committee considered a bill draft that, in part, would have amended the state's corruption or solicitation of a minor statute and the sexual assault statute. The bill draft provided that the sexual act in each statute was a crime if the adult were at least three years older than the minor. Testimony in support of the bill draft indicated

the amendments would decriminalize the consensual sexual relationships between some young couples, such as between a 17-year-old and an 18-year-old. It was noted that people may marry at age 16 in North Dakota; however, sexual relationships before age 18 are a crime if one person is 18 years of age or older. Other testimony on the bill draft indicated support for amendments that would provide for an age differential of three years instead of the current benchmark of age 18 and support to preserve the age of 15 years as the minimum age of consent. A three-year age difference would allow for the consideration of a young person's ability to consent to the relationship. Testimony in opposition to the bill draft indicated that there is a concern among some state's attorneys that they will lose discretion to prosecute on a case-by-case basis if the three-year age difference between the adult and the minor is enacted.

Adultery and Unlawful Cohabitation Statutes

The committee received testimony regarding the decriminalization of unlawful cohabitation and adultery. According to the testimony, the state does not have a need for a statute that makes it a crime for two adults of any age to live together. The last reported North Dakota Supreme Court case on adultery was in 1925. The view was expressed that the issue of adultery should be handled as a moral, religious, and family values issue. Regarding unlawful cohabitation, the testimony indicated the statute is outdated and should be repealed.

The committee considered a bill draft that would have repealed NDCC Sections 12.1-20-09 and 12.1-20-10. According to testimony on the bill draft, the legislative history for the unlawful cohabitation statute indicates the statute was only intended to cover fraud by a couple pretending to be a married couple and was not intended to make it a crime for two unmarried people to live together. Other testimony regarding the bill draft indicated that in a housing discrimination case in the state, the district court held that a landlord could refuse to rent to an unmarried couple based upon the state's unlawful cohabitation statute. Further testimony indicated other states have held the refusal to rent to unmarried couples to be a discriminatory practice.

Luring of Minors by Computer

The committee received testimony that North Dakota does not have a statute that protects children from the exposure created by the Internet. The testimony noted there was a recent situation in North Dakota involving a 16-year-old girl who was lured to Tennessee to have sex with an adult. If the luring reaches the point that physical contact is made and sexual acts occur, the sexual crime statutes can be used. It has become a national problem when adults hunt children over the Internet and lure them to locations for sexual relations. According to the testimony, several states and the federal government have made efforts to address the problem but have failed. Approximately 17 states have enacted statutes to

deal with luring of minors by computer, and all have been found to be unconstitutional infringements on the First Amendment. A New York statute, however, has been found to be constitutional and has been endorsed by free speech advocates and child advocacy groups.

The committee considered a bill draft that, in part, made it a crime for an adult to use a computer to lure a minor when the adult knows that the communication depicts sexual acts and by means of that communication the adult importunes, invites, or induces the minor to engage in sexual acts or to have sexual acts with the adult for the adult's benefit, satisfaction, lust, passions, or sexual desires. The bill draft provided that the crime is a Class A misdemeanor, but if the adult is 22 years of age or older or the minor is under the age of 15, the crime is a Class C felony. Testimony in support of the bill draft indicated the bill draft would protect North Dakota's children from those who would make them victims, but their identity is cloaked in the secrecy of the Internet. Other testimony regarding the bill draft indicated the words "luring by electronic means" could be added to the corruption or solicitation of minors statute rather than creating a new crime for the luring of minors by computer.

Miscellaneous Sexual Offense Statutes

The committee received testimony that a number of the state's sex crime statutes are ineffective in protecting people from becoming victims of sexual offenses. According to the testimony, NDCC Section 12.1-20-04 could be amended to address the problem of criminal street gangs using or mandating a sexual relationship between gang members and gang prospects. It was noted that to become a member of a criminal street gang, a person has to complete an initiation process. The testimony indicated criminalizing the initiation process would help law enforcement control this type of street gang activity.

The committee also received testimony regarding NDCC Section 12.1-20-12.1 relating to indecent exposure. The penalty for indecent exposure is a Class B misdemeanor. According to the testimony, the elements of the crime do not adequately address situations in which a person exposes oneself for sexual gratification. It was proposed that the statute be amended to separate the prosecution of the offense into disorderly conduct for the situation in which persons expose themselves in a prank situation, e.g., "mooning," or public urination, and indecent exposure for situations in which persons expose themselves for sexual gratification. According to the testimony, the indecent exposure statute is inadequate to deal with sexually deviant exhibitionism. Persons may expose themselves to children on a playground to satisfy their sexual desires and only be prosecuted for a Class B misdemeanor. It was suggested that the penalty for indecent exposure be elevated to a Class A misdemeanor and a Class C felony for subsequent violations.

The committee received testimony that the current statute of limitations for gross sexual imposition is three years. The testimony proposed that the statute of limitations be expanded to seven years to be consistent with the statute of limitations for child sexual molestation cases.

Recommendations

The committee recommends Senate Bill No. 2034 to provide for changes to the state's civil commitment of sexual predators statutes contained in NDCC Chapter 25-03.3. The bill removes the current exclusion of individuals with mental retardation from the statute; extends the time period for experts to complete evaluations from 30 days to 90 days, codifies the procedures to be used

by the Penitentiary for referring inmates scheduled for discharge; clarifies what portion of commitment proceedings are open; allows an individual to choose to be detained in a local correctional facility before a probable cause hearing; and provides rulemaking authority for the Department of Human Services.

The committee recommends Senate Bill No. 2035 to provide for the creation of a crime for luring minors by computer, to criminalize street gang initiation sexual acts, to separate disorderly conduct-type behavior from the indecent exposure statute and to make indecent exposure a crime for which a person is required to register as a sex offender, and to expand the statute of limitations for gross sexual imposition to seven years.

CROP HARMONIZATION COMMITTEE

The Crop Harmonization Committee was assigned two studies. Section 11 of Senate Bill No. 2009 (1999) directed the Legislative Council to create the committee to, in consultation with the Pesticide Control Board:

1. Identify and prioritize crop protection product labeling needs;
2. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act;
3. Identify the data necessary to enable registration of a use to occur in a timely manner;
4. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section and communicate its findings to the Agriculture Commissioner;
5. Request the Agriculture Commissioner to pursue specific research funding options from public and private sources; and
6. Report to the Legislative Council in the same manner as do other interim Legislative Council committees.

House Concurrent Resolution No. 3058 directed a study of the chemical application industry to develop a method for assessing or determining damage due to misapplication and for resolution of disputes through mediation. The Legislative Council designated the committee as the committee to receive at least two reports during the interim from the Agriculture Commissioner regarding the efforts to develop a single uniform process for the joint North American labeling of crop protection products as required by Section 5 of Chapter 64 of the 1999 Session Laws.

Section 11 of Senate Bill No. 2009 also provided that the committee was to consist of the chairman of the House Agriculture Committee, the chairman of the Senate Agriculture Committee, and three other individuals appointed by the Legislative Council chairman, one of whom must represent the crop protection manufacturing industry.

Committee members were Representatives Eugene Nicholas (Chairman) and Michael D. Brandenburg; Senators Meyer Kinnoin and Terry M. Wanzek; and Citizen Member Brett Oemichen.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

CROP HARMONIZATION STUDY

Background

During the 1999 legislative session, there was much discussion regarding the lack of access to crop protection products in this country which are available in Canada. Research by North Dakota farmers and farm groups indicated their Canadian counterparts were

permitted to use many crop protection products that were not registered for use in this country. Yet, the Canadian commodities treated with those products were being exported to this country. In addition, the research indicated many crop protection products registered for use in Canada and this country were priced substantially higher in the United States. Thus, notwithstanding the adoption of the North American Free Trade Agreement, producers in this country have been placed at a serious competitive disadvantage in the international marketplace.

Section 12 of Senate Bill No. 2009 appropriated \$15,000 from the minor use pesticide fund, \$15,000 from the general fund, and \$150,000 from special funds derived from grants or donation income to the Legislative Council for the purpose of addressing crop protection product registration and labeling during the 1999-2001 biennium.

Section 13 of Senate Bill No. 2009 stated legislative intent that the Agriculture Commissioner, Agricultural Experiment Station, and the North Dakota State University Extension Service use resources available to them to assist in the registration of crop protection pesticides in cooperation with the crop protection industry for use in the North Dakota agriculture industry during the 1999-2001 biennium.

Federal Law

The federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a, prohibits the sale or distribution of any pesticide that is not registered under the Act by the administrator of the Environmental Protection Agency. To prevent unreasonable adverse effects on the environment, the administrator is authorized to adopt regulations to limit the distribution, sale, or use in any state of any pesticide that is not registered with the administrator and which is not subject to an experimental use permit or an emergency exemption granted under the Act. Section 136a sets up a registration mechanism for pesticides, provides labeling requirements, and allows the administrator to conditionally register a pesticide if the pesticide and its proposed use are identical or substantially similar to any currently registered pesticide and use of that pesticide.

The administrator is authorized under 7 U.S.C. 136c to issue an experimental use permit to an applicant if the administrator determines that the applicant needs the permit to accumulate information necessary to register a pesticide. In addition, the administrator is required to establish regulations through which states may authorize experimental use permits for pesticides. The administrator is also authorized to issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution that applies for a permit for experimentation.

Under 7 U.S.C. 136o, the Secretary of the Treasury is required to notify the administrator of the arrival of pesticides that are imported into the United States. If a pesticide is determined to be misbranded or injurious to health or the environment, the pesticide may be refused admission.

The administrator is authorized under 7 U.S.C. 136p to exempt a federal or state agency from the provisions of the Act if the administrator determines that emergency conditions exist which require an exemption. In determining whether an emergency exists, the administrator is required to consult with the Secretary of Agriculture and the Governor of the state concerned if they request the exemption.

Under 7 U.S.C. 136v, states are authorized to regulate the sale or use of any federally registered pesticide to the extent the regulation does not permit any sale or use prohibited by the Act. Section 136v also provides that a state may provide registration for additional uses of federally registered pesticides formulated for distribution and use within that state to meet special local needs if registration for that use has not previously been denied, disapproved, or canceled by the administrator. The administrator may under certain circumstances advise a state of a disapproval of a registration for additional uses. A state is prohibited from issuing a registration for a food or feed use if a tolerance or exemption does not exist under the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., which permits the residues of the pesticide on the food or feed. If the administrator finds that a state is not capable of exercising adequate controls to assure that state registration is in accord with the purposes of the Act or has failed to exercise adequate controls, the administrator may suspend the authority of a state to register pesticides.

The administrator is authorized under 7 U.S.C. 136w-1 to delegate to a state primary enforcement responsibility for pesticide use violations if the state has adopted adequate pesticide use law and regulations, has adopted and is implementing adequate procedures for the enforcement of the state laws and regulations, and will keep compliance reports and records required by the administrator. Under 7 U.S.C. 136w-2, if the administrator determines a state that has primary enforcement responsibility is not carrying out that responsibility, the administrator must notify the state of the aspects of administration that are determined to be inadequate. The state is then given 90 days to correct any deficiencies. If after that time the administrator determines that the state program remains inadequate, the administrator may rescind the state's primary enforcement responsibility.

North Dakota Law

North Dakota Century Code (NDCC) Chapter 4-35 provides for the regulation of pesticides in this state. Section 4-35-02 establishes a Pesticide Control Board

consisting of the Agriculture Commissioner, the director of the Cooperative Extension Division of North Dakota State University, and the director of the Agricultural Experiment Station. The board is authorized to regulate the time, place, manner, methods, materials, and amounts and concentrations in connection with the application of a pesticide and to restrict or prohibit the use of pesticides in designated areas during specified periods of time. In addition, the board is authorized to adopt restricted use classifications as determined by the Environmental Protection Agency and to determine state restricted use pesticides for the state or designated areas within the state. Section 4-35-06 provides that regulations adopted by the board may not permit any pesticide use that is prohibited by the Act.

North Dakota Century Code Section 4-35-06.2 authorizes the Agriculture Commissioner to accept, on behalf of the Pesticide Control Board, funds received for expenses paid by the board relating to the registration of pesticides or donations given to the board. The funds must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which the funds were given.

North Dakota Century Code Section 4-35-07 authorizes the Pesticide Control Board to issue experimental use permits if necessary to accumulate information required to register a pesticide.

North Dakota Century Code Section 4-35-12 prohibits any person from distributing or selling restricted use pesticides or acting as a pesticide dealer without first having obtained certification from the Extension Service or a designee of the Extension Service.

North Dakota Century Code Section 4-35-12.1 authorizes the Agriculture Commissioner to issue a "stop-sale, use, or removal" order to any person who owns, controls, or has custody of a pesticide found by the commissioner to be in violation of Chapter 4-35 or when the registration of the pesticide has been canceled by the state or the Environmental Protection Agency. After receipt of the order, no person may sell, use, or remove the pesticide except in accordance with the order.

Pursuant to its authority to adopt regulations to carry out NDCC Chapter 4-35, the Pesticide Control Board has adopted an administrative rule providing that restricted use pesticides are the same as those declared to be restricted use pesticides by the Environmental Protection Agency and others declared at the discretion of the board. The board also has adopted rules relating to the use of the minor use pesticide fund.

1999 Legislative Proposals

The 56th Legislative Assembly enacted House Bill No. 1252 (codified as NDCC Chapter 4-40), which authorizes the sale and use of crop protection products having Canadian labels if the Agriculture Commissioner determines that a product having an American label

contains substantially similar active ingredients and if its importation and use does not violate federal law. The Agriculture Commissioner also is authorized to use tolerance data established or obtained in North America for purposes of pursuing special local exemptions. As originally introduced, the bill would have allowed the sale in this state of any agricultural chemical approved and registered for use in Canada and would have prohibited a chemical manufacturer from charging suppliers in this state an amount greater than that charged suppliers in the Canadian provinces bordering North Dakota, after taking into account the rate of exchange.

House Bill No. 1335 would have made it a Class B misdemeanor for any person to transport any agricultural product or livestock from another country into or through this state unless the product or livestock has a phytosanitary or sanitary certificate addressing its chemical levels. The Governor vetoed the bill and the Legislative Assembly sustained the veto.

The Legislative Assembly adopted House Concurrent Resolution No. 3035, which urged the Environmental Protection Agency and the Congress of the United States to increase resources for and efforts of the United States-Canada Technical Working Group to harmonize pesticide regulations between the two countries, to commit more resources and efforts toward establishing tolerances for pesticides registered for use in Canada but not in the United States, and to accept registration data currently accepted by Canadian officials in support of Canadian pesticide registrations. The resolution was forwarded to the director of the Environmental Protection Agency, the chairmen of the Congressional House and Senate Committees on Agriculture, and to each member of the North Dakota Congressional Delegation.

Testimony and Committee Considerations Agriculture Commissioner's Harmonization Efforts

The committee received updates at each meeting from the Agriculture Commissioner regarding the commissioner's efforts toward harmonization and the commissioner's efforts to develop a single uniform process for the joint North American labeling of crop protection products as required by 1999 Session Laws Chapter 64. The commissioner reported that he had regularly participated in meetings with representatives of the United States Environmental Protection Agency to discuss harmonization issues. Although the Environmental Protection Agency has granted North Dakota several crisis exemptions for the registration of crop protection products, it was contended that the procedure to request exemptions results in delays in approval of registration of new products. In addition, because the Canadian Pest Management Regulatory Agency is not authorized to grant similar crisis exemptions, Canadian producers and officials are critical of the Environmental Protection Agency for granting such exemptions.

The Agriculture Commissioner reported the Attorney General had issued an opinion stating that the Legislative Assembly did not intend that a one-half time position that was authorized to the Agriculture Commissioner be used to address harmonization issues. The opinion stated harmonization activities were delegated to the Crop Harmonization Committee and the funds for the one-half time employee in the Agriculture Commissioner's budget were to be used for minor use pesticide registration activities. Because the members of the committee generally believed the intent of the Legislative Assembly was for the Pesticide Control Board to use funds from the minor use pesticide fund to assist in the harmonization effort, the committee asked the Attorney General to clarify the opinion. The Attorney General issued a second opinion that again stated that funds in the minor use pesticide fund could not be used to fund an employee to work on harmonization issues.

At the initial meeting of the committee, a representative of the regional Environmental Protection Agency office in Denver, Colorado, indicated the agency may have grant funds available to assist the Agriculture Commissioner in hiring an employee who would be responsible for working on harmonization issues. The committee requested the Agriculture Commissioner to work with the representatives of the Environmental Protection Agency to pursue that grant. A representative of the Environmental Protection Agency announced at a later meeting of the committee that the agency provided funds to the Agriculture Commissioner to fund a position to be devoted to harmonization issues for two years.

Because the state is prohibited under federal law from placing a state registration label on a Canadian crop protection product without the consent of the Canadian manufacturer of the product, the Agriculture Commissioner corresponded with several crop protection product manufacturers to request permission to place a North Dakota label on products manufactured by those companies. None of the manufacturers granted permission to place a state label on the products.

Achieve 80 DG is a Canadian product registered for use in both the United States and Canada but not labeled in the United States. On May 31, 2000, the Agriculture Commissioner issued a state label for Achieve 80 DG so that North Dakota producers and crop protection product dealers could purchase the product in Canada and import the product into this country. However, when the manufacturer of the product protested, the Environmental Protection Agency determined federal law does not allow the importation of the product from Canada. The Agriculture Commissioner and the Attorney General filed a civil action in federal district court in August 2000 to enjoin the Environmental Protection Agency from implementing any regulation, policy, or practice in violation of the federal Insecticide, Fungicide, and Rodenticide Act that prevents North Dakota farmers or dealers from importing Canadian crop

protection products that are identical to products registered for use with the Environmental Protection Agency.

Although committee members generally expressed concern that the lawsuit would damage the relationship between North Dakota officials and representatives of the Environmental Protection Agency, the Agriculture Commissioner described the action as a "friendly" lawsuit that seeks judicial guidance on narrow legal issues and which has the support of some top officials at the Environmental Protection Agency. Committee members also expressed concern that the action of the Agriculture Commissioner in placing a state label on Achieve 80 DG would be construed by representatives of the crop protection product industry as an adversarial action that may discourage industry representatives from working with North Dakota officials to achieve harmonization.

Environmental Protection Agency and United States Department of Agriculture Harmonization Actions

A goal of the North American Free Trade Agreement was to provide for a single submission for registration of crop protection products and routine joint reviews and work sharing in the registration process. In December 1998 the United States and Canada entered a record of understanding which committed the countries to harmonize crop protection product labeling standards. Since the execution of the record of understanding, American and Canadian officials have met several times to address harmonization issues. The Environmental Protection Agency and the Canadian Pest Management Regulatory Agency have established a projected completion deadline in 2002 to achieve harmonization.

At a meeting of the committee in Washington, D.C., a representative of the United States Department of Agriculture stated significant progress has been made pursuant to the 1998 record of understanding, including a program through which grain produced in the United States may be transshipped through Canada. As a result, there has been a significant increase in the amount of commodities exported from this country to Canada. In 1999 approximately \$7 billion in commodities were exported from the United States to Canada, while about \$7.8 billion in Canadian commodities were exported to the United States.

According to representatives of the Environmental Protection Agency, joint reviews of new products can cut the registration process from three years to one year. During the joint review process, the regulatory agencies divide the work and share the results. However, each agency makes a decision based upon the shared results. Because of the resources available to the Environmental Protection Agency and the Pest Management Regulatory Agency, only a limited number of joint reviews are conducted each year. Nonetheless, the regulatory agencies cooperate on other registrations by using basic reviews from the other agency in the review process.

Because data requirements used by the Environmental Protection Agency and the Pest Management Regulatory Agency are substantially harmonized, representatives of the Environmental Protection Agency testified the cost of the registration process is similar in Canada and the United States. Thus, it was suggested the cost of a product should not vary greatly between the two countries. Nonetheless, a 1999 study conducted by the United States Department of Agriculture, Economic Research Service, and Agriculture and Agri-Food Canada indicated most major crop protection products available in Canada and the United States cost more in this country.

Although the Environmental Protection Agency and the Pest Management Regulatory Agency have been working on joint reviews and joint registrations of several new products, the committee received a significant amount of testimony indicating progress has been slow with respect to registration of products in this country which are registered in Canada. Representatives of the Environmental Protection Agency testified the agency is working with representatives of various commodity groups to identify priorities so that the agency can address those priority needs. It was generally acknowledged canola growers have been particularly aggressive in identifying priorities and more successful in having those priorities addressed by the Environmental Protection Agency.

Crop Protection Product Industry Harmonization Efforts

Representatives of the crop protection product industry testified that the industry supports harmonization efforts. However, concern was expressed regarding the slow pace of the regulatory process. Industry representatives asserted that when all regulatory guidelines and submissions have been harmonized, registration timelines and costs can be reduced. Among the greatest concerns of the industry is the ability of the regulatory agencies to handle a significant number of registration applications.

Testimony From Producers and Farm Groups

The committee received testimony from farmers and representatives of various commodity groups. Farmers testified that the high cost of crop protection products may make the difference in determining whether they will be able to remain in business in future years. Although no evidence of illegal importation of crop protection products was provided, the scenario was presented that if price harmonization does not occur soon, farmers may be tempted to illegally import cheaper Canadian products.

Concern was also expressed because Canadian commodities that have been treated with crop protection products that are not registered for use in the United States are shipped into this country and become part of the food chain. Testimony indicated United States trade

officials and the federal Food and Drug Administration are not adequately addressing concerns regarding the importation of commodities treated with crop protection products not registered for use in this country. Furthermore, even if the crop protection products have been proven to be safe, the fact that North Dakota farmers do not have access to those products often puts the North Dakota farmers at a competitive disadvantage because the crops can be grown in Canada for a lower price. Thus, it was argued true harmonization will not occur until the artificial barrier of the international border is removed and crop protection product dealers and farmers are permitted to purchase products in either country and use those products in either country.

Committee Activities and Discussion

At the invitation of the American Crop Protection Association, the committee held a meeting in Washington, D.C. While in Washington, the committee met with the members of the North Dakota Congressional Delegation, the chairman of the United States House subcommittee that has responsibility over matters related to pesticides, and the chiefs of staff of the United States House and Senate Agriculture Committees. At the request of the committee, the chairman of the United States Senate Agriculture Committee communicated with the administrator of the Environmental Protection Agency regarding expediting the process of harmonization of crop protection product regulations in the United States and Canada.

Two members of the committee attended the second meeting of the North American Market for Pesticides held in Ottawa, Ontario, Canada, in April 2000. Although discussion at that meeting indicated significant progress has been made in harmonizing registration standards and streamlining the registration process for new products, concern continued to be expressed regarding the slow pace in harmonizing or recognizing tolerances for existing products. The committee members who attended the Ottawa meeting indicated all parties at the meeting were supportive of the efforts to expedite the harmonization process. A committee member was permitted to actively participate in the discussion at the meeting.

The committee members expressed strong support for the inclusion of a citizen member on the committee. Because the citizen member was associated with the crop protection product industry, that member was able to act as a liaison with the industry as well as provide expertise to the committee.

Committee members generally agreed that creation of the Crop Harmonization Committee provided an avenue to continue the dialogue among state officials, the crop protection product industry, and the Environmental Protection Agency. The continued dialogue has been instrumental in moving the harmonization process forward and, most likely, at a faster pace. Because

harmonization is not yet a reality and progress has been slow with respect to existing products, committee members agreed legislative harmonization efforts should continue for at least two more years. Because Section 11 of Senate Bill No. 2009 (1999), which established the Crop Harmonization Committee, did not include an expiration date, the committee did not propose a resolution to direct a study during the next interim.

Recommendation

The committee recommends that the Legislative Council continue the committee in the future and allow the committee to continue working with the Environmental Protection Agency, the Pest Management Regulatory Agency, the American Crop Protection Association, the Canadian Crop Protection Association, and commodity groups in addressing issues related to harmonization.

CHEMICAL APPLICATION STUDY

Background

The 56th Legislative Assembly considered, but did not pass, House Bill No. 1322, which would have substantially revised the financial responsibility requirements applicable to commercial pesticide applicators. The bill provided that a commercial pesticide applicator certificate may not be issued or renewed for the category of agricultural pest control, whether by ground or by air, or for the right-of-way category unless the applicant furnishes proof of financial responsibility annually in the amount of \$100,000. Proof of financial responsibility could have been demonstrated by a general liability insurance policy that would include comprehensive chemical liability coverage for both drift and misapplication or by an irrevocable letter of credit from a state-recognized financial institution for general liability and chemical liability claims. The bill also would have required the Agriculture Commissioner to obtain the services of a certified insurance adjuster to evaluate the claim if a claim arose against a commercial applicator who would be required to meet the financial responsibility requirements and who had done so by means of an irrevocable letter of credit. Under the bill, if the adjuster determined the claim was valid, the commissioner would have been required to direct the financial institution that issued the letter of credit to forward to the commissioner an amount equal to the amount of the claim, together with any handling and adjuster fees. The bill would have required the commissioner to forward the claim amount to the claimant and deposit any remaining fees in the minor use pesticide fund.

North Dakota Law

North Dakota Century Code Chapter 4-35 addresses the distribution, sale, and application of pesticides.

Pesticide Control Board

The provisions of NDCC Chapter 4-35 are administered by the Pesticide Control Board. The Pesticide Control Board consists of the Agriculture Commissioner, the director of the Cooperative Extension Division of North Dakota State University of Agriculture and Applied Science, and the director of the Agricultural Experiment Station at North Dakota State University of Agriculture and Applied Science. The Agriculture Commissioner is the chairman of the board and is responsible for enforcement of Chapter 4-35.

Definitions

An "applicator" is any person who applies a pesticide to land. A "certified applicator" is an individual who is certified as authorized to use any restricted use pesticide covered by the applicator's certification. A "private applicator" is a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. A "commercial applicator" is a certified applicator, whether or not the applicator is a private applicator with respect to some uses, who uses any pesticide that is classified for restricted use for any purpose or on any property other than as provided for under the definition of a private applicator.

A "pesticide" is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliate, or desiccant. A "restricted use pesticide" is defined as a pesticide formulation that is classified for restricted use by the Pesticide Control Board.

Certification of Applicators

The Pesticide Control Board is authorized to adopt rules to carry out the provisions of NDCC Chapter 4-35, including rules prescribing methods to be used in the application of pesticides. The board is required to adopt standards and requirements for the certification of applicators of restricted use pesticides which relate to the use and handling of the pesticides.

The Pesticide Control Board has the authority to classify commercial certificates and to provide separate classifications as to ground, aerial, or manual methods used by an applicator to apply restricted use pesticides. Pursuant to that authorization, the board has adopted several categories of certifications.

An individual may be certified as a commercial applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the Pesticide Control Board and administered by the North Dakota State University Extension Service or the Extension Service designee. A

commercial applicator's certificate expires on the first day of April following two years from the date of issuance and then a certificate is renewable every three years on April 1. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board.

A private applicator must comply with the certification requirements of the board before that individual can buy, use, or supervise the use of any pesticide classified for restricted use. Commercial applicators must maintain records of sales of restricted use and special exemption pesticides and all commercial applications of pesticides. The board may require restricted use pesticide application records of private applicators.

A person applying pesticides that are not classified for restricted use is exempt from the certification requirements. In addition, the certification requirements do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide.

Financial Responsibility

The 55th Legislative Assembly (1997) established financial responsibility requirements for commercial pesticide applicators. North Dakota Century Code Section 4-35-09.1 provides that a commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility. That section requires that "minimum financial responsibility must be demonstrated annually in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy." If a performance bond or insurance policy is used as proof of financial responsibility, the bond or policy must contain a provision requiring the issuing company to notify the Agriculture Commissioner at least 10 days before the effective date of cancellation, termination, or other modification of the bond or insurance policy.

The Agriculture Commissioner is required to request the suspension of the certification of a person who fails to maintain the minimum financial responsibility standards. In addition, if there is any recovery against the certificate holder, the holder is required to demonstrate continued compliance with the minimum standards. An employee of a commercial pesticide application business is not required to meet the financial responsibility standards separately if the business documents compliance with the minimum financial responsibility standards. The following individuals and entities are exempt from the financial responsibility standards requirements:

1. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
2. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
3. A person required to be certified in the right-of-way category.
4. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

Enforcement of Pesticide Laws

The Agriculture Commissioner can deny, suspend, revoke, or modify any provision of any certification issued if the commissioner finds that the applicant or a holder of the certification has committed an act in violation of NDCC Chapter 4-35. The commissioner must provide an opportunity for a hearing before the denial, suspension, or revocation of the certification is effective.

Under NDCC Section 4-35-21, the Pesticide Control Board must adopt rules requiring the reporting to the Agriculture Commissioner of pesticide accidents. A person claiming damages from a pesticide application inflicting damage on property, except when the claimant was the operator or applicator of the pesticide, must report the loss. A claimant is required to permit the Agriculture Commissioner, the applicator, and the applicator's representatives to observe the lands or property alleged to have been damaged to examine the alleged damage. The failure of a claimant to permit the observation and examination of the damaged lands is an automatic bar to the claim against the applicator.

Under NDCC Section 4-35-21.1, a civil action may not be commenced arising out of the application of a pesticide by an applicator inflicting damage on property unless, within 60 days from the date the claimant knew or reasonably should have known of the damage:

1. The claimant has served the applicator allegedly responsible for the damage with a verified report of loss;
2. If the claimant is someone other than the person employing the applicator alleged to be responsible for the damage, the claimant has served the person who employed the applicator allegedly responsible for the damage with a verified report of loss; and
3. The claimant has mailed or delivered to the Agriculture Commissioner a verified report of loss together with proof of service of the report of loss.

If damage is alleged to have occurred to growing crops, the report must be filed before the time 50 percent of the field is harvested or within 60 days from the date the claimant knew or reasonably should have known, whichever occurs first. The applicator is required to provide anyone who alleges damage with information of the requirement for filing a verified report and that timely filing of a report is a prerequisite to any civil action. The failure to provide that information may be grounds for revocation of the applicator's certification and nullification of the 60-day limitation.

A verified report of loss arising out of the application of a pesticide by an applicator must include the name and address of the claimant; the type, kind, and location of property allegedly injured or damaged; the date the alleged injury or damage occurred; the name of the applicator allegedly responsible for the loss or damage; and if the claimant is not the same person for whom the work was done, the name of the owner or occupant of the property for whom the applicator was rendering labor or services.

An applicator, other than a private applicator who knowingly violates any provision of NDCC Chapter 4-35, is guilty of a Class A misdemeanor. In addition to the criminal sanctions that may be imposed, a person found guilty of violating Chapter 4-35 or rules adopted pursuant to the chapter is subject to a civil penalty not to exceed \$5,000 for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the Agriculture Commissioner through an administrative hearing. The Agriculture Commissioner is authorized to bring an action to enjoin the violation or threatened violation of any provision of Chapter 4-35 and to pursue the authorized civil penalties.

Regulation by Aeronautics Commission

The Aeronautics Commission has authority to license aircraft used in aerial spraying. North Dakota Century Code Section 2-05-18 requires a person engaged in aerial spraying to first obtain a license for each aircraft used in aerial spraying. The license fee for each aircraft is \$15.

Under NDCC Section 2-05-19, the Aeronautics Commission can serve upon any person engaged in aerial spraying an order to cease and desist when the commission has reason to believe the person is violating, has violated, or is attempting to violate any applicable law or rule. Under Section 2-05-20, the Aeronautics Commission can impose civil money penalties against a person willfully violating an order to cease and desist or willfully violating any other law or rule in an amount not to exceed \$500 for each violation.

1999 Legislation

The 56th Legislative Assembly enacted House Bill No. 1439, which included additional exemptions to the financial responsibility requirements. The bill provided

that the proof of financial responsibility requirements do not apply to a grazing association and its members if either the association or its members must obtain a commercial pesticide applicator certificate as a condition of a federal grasslands lease, to a person required to be certified in the right-of-way category, or to an applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

Neighboring States' Laws

South Dakota

Under South Dakota law, pesticide applicators are required to be licensed. South Dakota Codified Laws Section 38-21-18 authorizes the Secretary of Agriculture to adopt standards for certifications of applicators of pesticides. The South Dakota Legislature repealed financial responsibility requirements for pesticide applicators in 1976.

South Dakota Codified Laws Section 38-21-47 requires the Secretary of Agriculture, upon receipt of a damage claim resulting from the application or misapplication of pesticides, to inspect damages whenever possible and, if the secretary determines that the complaint has merit, make information regarding the merit of the claim available to the person claiming the damage and to the person who was alleged to have caused the damage.

Minnesota

Under Minnesota law, commercial pesticide applicators are required to obtain a license from the Commissioner of Agriculture. Minnesota Statutes Section 18b.33 provides that a commercial applicator license may not be issued unless the applicant furnishes proof of financial responsibility. The financial responsibility may be demonstrated by either proof of net assets equal to or greater than \$50,000 or by performance bond or insurance of the kind and in the amount determined by the commissioner. The commissioner has established \$50,000 as the minimum amount of performance bond or insurance.

Montana

The Montana Code Annotated requires commercial applicators to be licensed. Montana Code Annotated Section 80-8-214 requires the Department of Agriculture to adopt rules implementing proof of financial responsibility requirements for commercial pesticide applicators. The Department of Agriculture requires proof of financial responsibility in the amount of \$1,500 for aerial applicators and \$500 for ground applicators. Proof of financial responsibility must be provided annually and must be maintained throughout the licensing period for the commercial applicator.

Montana law also requires a person suffering loss or damage resulting from the use or application of any pesticide to file with the Department of Agriculture a verified report of loss within 30 days from the time the occurrence of the loss became known to the person. If the person fails to file the report and that person is the only one injured from the application or use of the pesticide, the Department of Agriculture may refuse to hold a hearing for the denial, suspension, or revocation of a license until the report is filed.

Testimony

The committee received testimony from a representative of the North Dakota State University Extension Service, which trains and certifies applicators to apply restricted use pesticides. The testimony indicated that the state's financial responsibility law is ineffective and difficult to administer. Because the financial responsibility requirements do not require insurance for misapplication of pesticides and because general liability insurance does not cover misapplication and pesticide drift, the problem of protecting against misapplication and drift accidents is not solved. The testimony indicated another problem with the current law is that only a person applying restricted use pesticides must comply with the financial responsibility requirements. In addition, the requirements are difficult to administer because certifications are granted for three-year periods while the financial responsibility requirements must be provided yearly. The testimony suggested three possible courses of action to address the financial responsibility requirements:

1. Repeal the financial responsibility requirements.
2. Enact broader language that would require pesticide misapplication coverage rather than only general liability insurance, require financial responsibility for all commercial applicators regardless of certification status, and require the financial responsibility law to be administered by a licensing agency rather than an educational institution.
3. Modify the existing law to streamline its administration.

Representatives of the Agriculture Commissioner, who is responsible for enforcement of the financial responsibility requirements, testified that enforcement proceedings against applicators who do not comply with the requirements must be accomplished through the administrative hearing process. Because over 700 applicators did not provide proof of financial responsibility in 2000, enforcement of the requirements is cost-prohibitive.

The Agriculture Commissioner receives approximately 60 to 70 complaints regarding pesticide applicators each year. Generally, 50 to 60 percent of those complaints are related to pesticide drift. The testimony indicated in most of the cases, the parties are able to

resolve the problems between themselves. There was also testimony indicating that the cost of a pesticide misapplication insurance rider costs approximately 10 times more than the cost of a general liability insurance policy.

Testimony indicated although the 1997 legislation was intended to address problems caused by applicators who do not carry insurance, the law has had little effect on those individuals. Because the number of applicators who do not carry insurance likely has not changed significantly since the financial responsibility requirements were implemented and because of the difficulty in administering and enforcing the requirements, it was suggested the requirements provide no tangible benefit.

Conclusion

Committee members generally agreed that the financial responsibility requirements are ineffective and should be changed. However, because there was no consensus regarding the most appropriate approach to solve the problems associated with drift and misapplication of pesticides, the committee makes no recommendation regarding this study. The committee encouraged the interested parties to assist the Legislative Assembly in pursuing solutions to the drift and misapplication concerns and serious consideration be given to recommending repeal of the existing law.

EDUCATION FINANCE COMMITTEE

The Education Finance Committee was assigned four studies. Section 13 of 1999 Senate Bill No. 2162 directed a study of the provision of education to public school students in this state and the manner in which education to public school students will be delivered in the ensuing 5, 10, and 20 years. The bill also directed consideration of demographic changes as they affect equity of educational opportunities with respect to courses, facilities, and extracurricular activities; equity with respect to teacher availability and qualifications; equity with respect to the organization and administration of school districts; and taxpayer equity in both rural and urban school districts. Senate Concurrent Resolution No. 4031 directed a study of the method by which the state funds special education services. House Concurrent Resolution No. 3054 directed a study of accreditation standards for elementary and secondary schools, including optional accreditation standards, the fiscal impact of accreditation standards, and the waiver of accreditation standards based on student performance. Senate Concurrent Resolution No. 4042 directed a study of the feasibility and desirability of developing and implementing statewide academic standards for and assessment of elementary and high school students and a system of accountability at the school and school district level. Section 18 of 1999 S. L., ch. 35, directed that the committee receive a report from the Superintendent of Public Instruction regarding the content of the financial reports from school districts and the specific actions taken to account for transfers from school district general funds, to eliminate or reduce variations in the reporting of data, and to ensure that the financial data is available in a form that allows for accurate and consistent comparisons.

Committee members were Senators Layton Freborg (Chairman), Dwight C. Cook, Jerome Kelsh, and Rolland W. Redlin and Representatives James Boehm, Thomas T. Brusegaard, Jack Dalrymple, Lois Delmore, Rachael Disrud, David Drovda, Howard Grumbo, C. B. Haas, Lyle Hanson, Kathy Hawken, Dennis E. Johnson, RaeAnn G. Kelsch, Deb Lundgren, Ralph Metcalf, Robert E. Nowatzki, Bob Stefonowicz, and Laurel Thoreson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

PROVISION OF EDUCATION STUDY

Background

North Dakota Constitution

Section 1 of Article VIII of the Constitution of North Dakota provides:

A high degree of intelligence, patriotism, integrity and morality on the part of every

voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

The words in Section 1 have been unchanged since their enactment in 1889. Section 2 of Article VIII of the Constitution of North Dakota follows with the directive that:

The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.

Section 3 of Article VIII of the Constitution of North Dakota further requires that "instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind." Finally, Section 4 of Article VIII of the Constitution of North Dakota directs the Legislative Assembly to "take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements."

Since the 1930s, the state has attempted to meet its constitutional directives by providing some level of financial assistance to local school districts. In the mid-1950s, a legislative interim Education Committee determined that the state assistance was set at arbitrary levels. The committee also noted that existing statutes did not require "uniform minimum local efforts through the taxation of all property by the local school districts in an effort to support their own education systems, to the degree that is believed desirable by the Committee." It was the 1957-58 interim Education Committee that recommended passage of a state foundation aid program.

Initiation of the Foundation Aid Program

A foundation aid program designed to provide financial assistance to local school districts has been in effect in North Dakota since 1959 when the Legislative Assembly enacted a uniform 21-mill county levy and

provided a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program was adopted in part because the Legislative Assembly recognized that property valuations, demographics, and educational needs varied from school district to school district. The Legislative Assembly embraced the broad policy objective that some higher cost school districts in the state "must continue to operate regardless of future school district reorganization plans." Taking into account the financial burdens suffered by the low valuation, high per student cost school districts, the Legislative Assembly forged a system of weighted aid payments that favored school districts with lower enrollments and higher costs. This initial program also allocated higher weighting factors to districts that provided high school services.

Until the 1970s, the foundation aid program remained essentially unchanged. During that time, however, federal and state courts were beginning to address issues of spending levels for elementary and secondary education and whether those levels should be dependent upon the wealth of the school district in which a student resides. The Legislative Assembly, in an attempt to preempt the issue in North Dakota, responded by amending the foundation aid program in a way that evidenced a higher level of sophistication. The state more than doubled the per student payment and replaced the flat weighting factor with one that recognized four classes of high schools. Elementary weighting factors were altered as well. Adjustments continued to be made during the mid-1970s. A new category encompassing seventh and eighth grade students was created, and fiscal protection for schools experiencing declining enrollments was instituted. This latter provision ensured that no school district could receive less in foundation aid payments for a current year than that district would have received based on its enrollment during the previous school year. For the 1975-77 biennium, the foundation aid appropriation was \$153.4 million. In 1979 the Legislative Assembly appropriated \$208.4 million for the foundation aid program and added an additional appropriation of \$1 million to pay for free public kindergartens.

The next major development affecting education finance occurred with the approval of initiated measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level. To meet this goal, the 47th Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated measure No. 6 also provided for a tax credit that made the 21-mill levy inapplicable to all but the owners of extremely high-value properties. The Legislative Assembly eliminated the 21-mill county levy and increased state aid to

compensate for the revenues that would have been derived from the levy.

During the early 1980s, discussions continued to center around purported funding inequities. Districts spending similar amounts per student and having similarly assessed valuations were not levying similar amounts in property taxes to raise the local portion of education dollars. It was alleged that the system encouraged some districts to levy much smaller amounts than their spending levels and assessed valuations justified.

In response, the Legislative Council's Education Finance Committee during the 1981-82 interim examined a method of funding education known as the "70-30" concept. This proposal was a significant departure from the existing foundation aid formula in that it took into account the cost of providing an education in each school district. The formula required determination of the adjusted cost of education and then required the computation of a 30 percent equalization factor to arrive at each district's entitlement. It was contemplated that a local mill levy would be employed to raise the district's local share of the cost of education.

Proponents touted this approach as one that included a comprehensive equalization mechanism and which recognized local variances in the cost of education. Opponents argued it did nothing more than award high-spending districts and penalize those that had been operating on restricted budgets. The interim committee did not recommend the concept.

Discussions regarding the many aspects of education finance continued through the 1980s. Legislative Council interim committees explored weighting factors, considered the effects of increasing the equalization factor, and explored the excess mill levy grant concept. During the 1987-88 interim, the Education Finance Committee even established specific goals and guidelines to guide its deliberations on matters of education finance. While the interim committees articulated the need to alter the state's education funding system, they reached little agreement beyond recommending increases in the level of per student aid.

State Litigation

In 1989 legal action was initiated for the purpose of declaring North Dakota's system of public school finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity which were directly and unconstitutionally based upon property wealth.

On February 4, 1993, after hearing 35 witnesses and examining over 250 exhibits, the district court issued 593 findings of fact and 32 conclusions of law. The court listed these "constitutionally objectionable" features of the school financing system:

- Disparities in current revenue per student are the result of variations in school district taxable wealth.
- The 22-mill equalization factor in the foundation aid formula fails to equalize for variations in district wealth because the equalization factor is below the state average school district tax rate for current revenue and leaves much of the school millage outside the foundation formula.
- The low level of foundation educational support fails to ensure substantial equality of resources for students in similarly situated school districts.
- The use of cost weightings that are inaccurate unjustifiably benefits districts with large amounts of taxable wealth.
- The flat grant allocation of tuition apportionment ignores the vast differences in taxable wealth among school districts and operates as a minimum guarantee for wealthy districts.
- The transportation aid program exacerbates existing resource disparities by reimbursing some, often wealthy, districts for more than the actual cost of transportation and requires other, often poorer, districts to fund a substantial share of transportation costs from other revenue sources.
- The special education funding program exacerbates existing resource disparities by giving higher-spending districts an advantage in obtaining state reimbursement of special education costs and requiring school districts to fund a large share of the excess costs of special education programs from their disparate tax bases.
- The state aid for vocational education exacerbates existing resource disparities.
- The state system for funding school facilities relies on the unequal taxable wealth of school districts.
- The payment of state aid to wealthy districts enables them to maintain large ending fund balances.
- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of North Dakota students, rather than on the unequal taxable wealth of North Dakota school districts.

The district court declared the North Dakota school financing system to be in violation of the Constitution of North Dakota Article VIII, Sections 1 and 2, and Article I, Sections 21 and 22. The Superintendent of Public Instruction was directed to prepare and present to the Governor and the Legislative Assembly, during the 1993 legislative session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

Response to the Litigation

In response to the district court's order, the Superintendent of Public Instruction presented the following recommendations to the 53rd Legislative Assembly:

- Raise the per student payment to \$3,134.
- Fund special education by dividing the 13 disabilities categories into three broad categories and assigning weighting factors to each.
- Fund vocational education by assigning weighting factors to high-cost and moderate-cost programs.
- Provide transportation reimbursements based on six categories of density.
- Provide state funding of education at the 70 percent level.
- Establish a uniform county levy of 180 mills.
- Distribute tuition apportionment in the same manner as foundation aid.
- Provide that federal and mineral revenues in lieu of property taxes and districts' excess fund balances be part of a guaranteed foundation aid amount.
- Allow districts the option of levying 25 mills above the 180-mill uniform county levy.
- Require that all land be part of a high school district and that districts having fewer than 150 students become part of a larger administrative unit.
- Provide \$25 million for a revolving school construction fund.

The Legislative Assembly offered its response by way of House Bill No. 1003 (1993). The bill was the appropriations bill for the Superintendent of Public Instruction, and as it progressed through the legislative process, it became the principal 1993 education funding enactment. The bill:

- Set the state support for education at \$1,572 per student for the first year of the 1993-95 biennium and at \$1,636 for the second year.
- Raised the equalization factor from 21 to 23 and then to 24 mills.
- Set weighting factors at 25 percent of the difference between the prior statutory amount and the five-year average cost of education per student, as determined by the Superintendent of Public Instruction, for the first year of the biennium and at 50 percent of the difference for the second year of the biennium.
- Capped state transportation payments at 100 percent for the first year of the 1993-95 biennium and at 90 percent for the second year of the biennium and directed that any savings resulting from imposition of the 90 percent cap during the second year of the biennium be used by the Superintendent of Public Instruction to increase the per student transportation payments available

under North Dakota Century Code (NDCC) Section 15-40.1-16.

- Reiterated the existing statutory requirement that school districts admitting nonresident students charge tuition but exempted school districts that admit nonresident students from other districts offering the same grade level services.
- Directed the Legislative Council to conduct another study of education finance and appropriated \$70,000 for purposes associated with the study, including necessary travel and consultant fees.

1993-94 Interim Study and 1995 Legislation

The Legislative Council's interim Education Finance Committee began its efforts during the 1993-94 interim before an appeal of Bismarck Public School District No. 1 was taken to the North Dakota Supreme Court. The committee was aware that many of the issues addressed by the trial court had been the subject of interim studies and legislative deliberations for many years. The committee also realized, however, that the requisite number of Supreme Court justices (four) might not necessarily agree with the lower court's determination that the state's system of funding education was unconstitutional.

The North Dakota Supreme Court issued its decision on January 24, 1994--Bismarck Public School Dist. No. 1 v. State of North Dakota, 511 N.W.2d 247 (N.D. 1994). Although three of the five justices held that the state's education funding system was unconstitutional, the Constitution of North Dakota Article VI, Section 4 requires four members of the court to declare a statute unconstitutional.

A majority of the Supreme Court indicated that there were three principal areas in need of attention--in lieu of revenues, equalization factors, and transportation payments. The Supreme Court did not, however, spell out specific legislative action. The court indicated the areas of concern and left it up to the Legislative Assembly to determine how those areas should be addressed. In a dissenting opinion, Chief Justice VandeWalle stated:

. . . [T]he present funding system is fraught with funding inequities which I believe have not yet transgressed the rational-basis standard of review but which appear to me to be on a collision course with even that deferential standard.

The Supreme Court decision was issued midway through the 1993-94 interim. By the time the Education Finance Committee had completed its work, it had considered 35 bill drafts and three resolution drafts. Twenty-seven pieces of legislation were recommended to the Legislative Council for introduction during the 1995 legislative session.

The committee's recommendations included increases in the minimum high school curriculum; establishment of an additional Governor's school; appropriation of funds for elementary summer school programs, professional development programs, professional development centers, and refugee student assistance; placement of all land in a high school district; alteration of the weighting categories; a variable equalization factor; reclassification of special education categories; distribution of tuition apportionment according to average daily membership; an increase in transportation payments from 28 cents to \$1 per day for all students transported by schoolbuses; and an \$80 million increase in the level of foundation aid over that appropriated during the 1993-95 biennium.

Although the 54th Legislative Assembly enacted a variety of bills dealing with education and education finance, the most significant provisions were found in three bills--Senate Bill No. 2059, Senate Bill No. 2063, and Senate Bill No. 2519.

Senate Bill No. 2059 dealt with the funding of transportation. The bill maintained the per mile payment of 25 cents for small buses and 67 cents for large buses, and it added a payment for in-city transportation of 25 cents per mile. The per head payment for in-city students riding schoolbuses or commercial buses was increased from 17.5 cents to 20 cents per one-way trip. The 90 percent cap on payments, which was instituted by the 53rd Legislative Assembly, was left in place.

Senate Bill No. 2063 dealt with the funding of special education. The bill provided that \$10 million must be used to reimburse school districts for excess costs incurred on contracts for students with disabilities, for low-incidence or severely disabled students, and for certain boarding care. The bill also provided that \$400,000 must be used to reimburse school districts for gifted and talented programs approved by the Superintendent of Public Instruction, and \$500,000 must be used to reimburse school districts with above-average incidence of moderately or severely disabled students. Any amount remaining in the special education line item must be distributed to each school district in accordance with the number of students in average daily membership. The line item for special education was \$36,850,000. The bill also provided that, during the 1995-96 school year, no district or special education unit could receive less than 95 percent of the amount it received during the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. During the 1996-97 school year, no district or special education unit could receive less than 90 percent of that amount.

Senate Bill No. 2519 provided an increase in the per student payment for isolated elementary schools and high schools and increased by 20 percent the weighting factors applied to students attending school out of state. The bill raised the equalization factor from 24 mills to 28 mills for the first year of the biennium and to 32 mills

for the second year of the biennium, and provided that thereafter the equalization factor would be tied by a mathematical formula to increases in the level of foundation aid. The equalization factor would not be permitted to fall below 32 mills nor rise above 25 percent of the statewide average school district general fund mill levy. Weighting factors, which had been set at 50 percent of the difference between the factor stated in statute and the five-year average cost of education per categorical student, were left at 50 percent of the difference for the first year of the biennium and then raised to 65 percent of the difference for the second year. High school districts whose taxable valuation per student and whose cost of education per student were both below the statewide average could receive a supplemental payment, again based on a mathematical formula. The sum of \$2,225,000 was appropriated for supplemental payments. Per student payments were set at \$1,757 for the first year of the biennium and at \$1,862 thereafter.

The 54th Legislative Assembly appropriated \$517,598,833 for foundation aid, transportation aid, supplemental payments, tuition apportionment, and special education. That figure exceeded the 1993-95 appropriation by \$41,561,941.

Education Finance - 1997 Legislation

The 55th Legislative Assembly incorporated the substantive provisions of its education finance package within Senate Bill No. 2338. That bill set the per student payments at \$1,954 for the 1997-98 school year and at \$2,032 for the 1998-99 school year. The equalization factor, which was raised to 32 mills by the 54th Legislative Assembly and thereafter tied by a mathematical formula to future increases in the level of foundation aid, was left at 32. All references to formulated increases were removed. Weighting factors, which were set at 65 percent of the difference between the statutory factor and the five-year average cost of education per categorical student, remained at 65 percent for the 1997-98 school year and increased to 75 percent for the 1998-99 school year.

Supplemental payments to high school districts whose taxable valuation per student and average cost of education are below the statewide average were maintained by House Bill No. 1393, but the mill range for eligible districts was raised from the 1995 level of 135 to 200 mills to the 1997 level of 150 to 210 mills. Payments to school districts for the provision of services to students with special needs were increased from the 1995-97 appropriation of \$36,850,000 to the current appropriation of \$40,550,000. Ten million dollars of this amount was set aside for student contracts, \$400,000 for the provision of services to gifted students, and the remainder was to be distributed on a per student basis.

The total amount appropriated for the foundation program, transportation, supplemental payments, tuition apportionment, and special education by the

55th Legislative Assembly was \$559,279,403. That figure exceeded the 1995-97 appropriation by \$41,680,570.

Education Finance - 1999 Legislation

The 1997-98 interim Education Finance Committee began to look at the impact of declining demographics. This concept found its way into Senate Bill No. 2162, which was enacted by the 56th Legislative Assembly.

Senate Bill No. 2162 addressed declining demographics by authorizing school districts to jointly employ school district superintendents.

Declining demographics found their way into discussions regarding school construction approval. Senate Bill No. 2162 also provided that the Superintendent of Public Instruction may not approve the construction, purchase, repair, improvement, renovation, or modernization of any school building or facility unless the school district proposing the project demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, or demonstrates potential utilization of the project by a future reorganized school district.

Senate Bill No. 2162 also allowed school districts to terminate their operations, become nonoperating districts for up to three years, and during the period of "nonoperation" to provide for the education of their students in other school districts. (House Bill No. 1033, which failed to pass the House of Representatives, would have required every school district to offer grade levels 1 through 12, before July 1, 2002, or become attached to a district that does.)

Senate Bill No. 2162 set aside up to \$2 million for school districts whose 1999-2000 fall enrollment was less than their 1994-95 fall enrollment and provided up to \$2 million in bonuses for school districts that reorganized with one or more contiguous districts or portions of districts, provided at least one of the reorganizing districts was a high school district, and further provided that the newly reorganized district consisted of at least 800 square miles.

The 56th Legislative Assembly appropriated \$479,006,259 for foundation aid and transportation payments, \$3.1 million for supplemental payments, \$53,528,217 for tuition apportionment payments, and \$46.6 million for special education payments. The per student payments were set at \$2,145 for the first year of the 1999-2001 biennium and \$2,230 for the second year.

State Demographics - Effects on Education Finance

Over the past two decades, the central United States has experienced a dramatic decline in childbirth. Much of the baby boom generation has finished having children and their successors have delayed starting families

and have chosen to have significantly smaller families. This decline has been especially noteworthy in an area covering 279 counties in six states. The area includes the states of Wyoming and Montana, half of Kansas, approximately three-fourths of Nebraska, and most of South Dakota and North Dakota.

In this state, much of the demographic decline has been attributed to changes in agriculture. What was once a highly labor-intensive industry has become a highly capital-intensive industry. People who at one time resided in rural areas because of their involvement in agriculture had to move elsewhere to take advantage of job opportunities. In 1900 over 90 percent of this state's population resided in rural areas. Today, over two-thirds reside in the 17 "urban" communities having more than 2,500 residents.

In 1960 nearly one-quarter of the state's population was under the age of 10. Today, deaths exceed the number of births in 31 of the state's 53 counties. This decline in population can be seen in relatively short periods of time. In 1990 children under the age of 6 comprised 9.1 percent of the state's population. By 1996 that figure dropped to 7.7 percent. Assuming a continuation of the downward trend in birthrates, coupled with outmigration, the state's kindergarten through grade 12 student population is expected to drop from a 1997 level of 121,708 to 100,152 students by the year 2007.

With these factors as a backdrop, the committee was told that fewer children and fewer taxpayers will affect the number of school closures and school district consolidations in the coming years and will impact educational opportunities for children. Consequently, the committee explored ways in which children can be assured of quality educational experiences.

Teachers

Quality teachers are said to be the single biggest factor in student achievement. To be a quality teacher, one must have a command of the subject matter and have strong pedagogical skills. Quality teachers are produced by quality teacher education programs. Those programs are defined by a similarity of vision between their faculty and administration, a rigorous core curriculum, and the extensive use of problem-based teaching methods.

Teacher education programs in this state require students to take general education courses and a professional core, to have an academic major, and to obtain field experiences that include student teaching. In order to be eligible for licensure, students must complete a baccalaureate degree program. In other states, teacher education programs are five years in length and often include some master's level work. Almost half of all states require a master's degree for full licensure.

Teacher Shortages

As the federal government continues to promote class size reductions, states such as North Dakota are experiencing the effects of teachers moving out-of-state in pursuit of more attractive teaching positions. School districts in the state's lower-income areas are having difficulty recruiting teachers. School districts in all locations are having difficulty finding qualified individuals to teach in the areas of mathematics, science, and music.

During the next six years, 4,500 out of approximately 9,000 teachers are expected to retire. Even though North Dakota teacher education programs produce 600-700 new teachers each year, fewer than half of those graduates elect to remain in this state.

Suggestions to combat the teacher shortage included:

- Increasing teacher salaries, with particular attention to rural communities, the salaries of which are often not competitive with larger urban centers in this state;
- Offering forgivable loans and other incentives to teacher candidates who make a commitment to teach in needed academic areas or in high-need rural areas;
- Supporting teacher mentoring programs, particularly for first-year teachers attempting to make the transition from the expectations of a college-based environment to the expectations of a school system;
- Supporting the efforts of the Education Standards and Practices Board to maintain high standards for teacher licensure, continuing education, and professional conduct; and
- Supporting continuing education for teachers at all stages of their careers.

Administrators

School district administrators are attempting to address similar challenges with respect to recruitment and retention in their profession. Through various associations and organizations, motivational speakers have been invited for the purpose of lending inspiration to students during their preservice programs, to teachers, and to administrators. Early career workshops and aspiring administrator workshops are also offered to induct new administrators into the profession and to encourage teachers to pursue administration as a career move. Participation in instructional leadership classes is also encouraged so that those individuals in administrative roles are better able to develop supervisory relationships with new and experienced teachers. Providing opportunities for growth, recognition for jobs well done, responsibility, and advancement are promoted as ways of attracting individuals to administration and motivating those individuals to remain in administration.

School Construction

North Dakota has over 21.6 million square feet of school space and 31.2 percent of the total square footage is less than 10 years old; 10.8 percent is between 10 and 30 years old; 41.7 percent is between 30 and 50 years old; and 15 percent is over 50 years old. A recently conducted survey of North Dakota school districts indicated that necessary repairs and maintenance to existing schools would cost in excess of \$421 million. The scope of the projects in the survey included site work (paving and lighting); building exteriors (windows, doors, and exterior walls); roofing; handicapped accessibility (rest rooms, drinking fountains, and elevators); teaching areas (classrooms, laboratories, and music rooms); nonteaching areas (corridors, rest rooms, and media centers); heating, ventilation, and air-conditioning systems; plumbing systems; electrical services; and electrical systems (public address, clocks, and fire alarms).

Under state law, a school district seeking to construct, purchase, repair, improve, modernize, or renovate any public school building or facility must first obtain the permission of the Superintendent of Public Instruction if the effort is estimated to cost more than \$25,000. Although school construction laws have been in effect for over 30 years, it was the 1999 amendments that provided the Superintendent of Public Instruction with review authority. The amendments recognized that school construction projects have consequences for the surrounding districts and for the state at large. For this reason, the statute provides that the Superintendent of Public Instruction cannot approve a project unless the school district proposing it demonstrates the need for the project, its educational utility, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project or could demonstrate that the project could be utilized by a future reorganized school district.

Demographics highlight issues of taxpayer equity with respect to school construction projects. In 1998, 16 counties had fewer than 25 births. There is no expectation this trend will change in the near future. In fact, 18 counties have 80 percent of all school students. Most schools in this state were built to easily accommodate 18 to 25 students per classroom. The smallest high schools now average 4.9 students per classroom and the largest high schools average 16 students per classroom.

School District Consolidation

School district consolidation has an impact on educational offerings, school facilities, teacher salaries, and student transportation. Whether that impact is considered to be positive or negative is largely dependent on the definitions applied to terms such as "small," "rural," "efficiency," "local control," and "quality education." A small school district, depending on the source, may be

any district having fewer than 2,600 students. Optimum size high schools are found to be defined as having student populations in a range that is greater than 200 but fewer than 2,400 students. Other sources state that optimum size high schools are any schools having a student population in excess of 400.

Small schools are often defined as having fewer than 400 students. Very small schools are thought to be those having fewer than 100 students. Similarly, rural areas are defined as any place having fewer than 2,500 people, any place located outside a metropolitan area and having fewer than 10,000 people, and every place other than a city of 50,000 or more.

Efficiency is, in simplest terms, thought to mean the provision of basic services at the lowest possible price. More recent definitions add in concepts such as improving student performance at the lowest cost per unit of achievement or maintaining needed services in a rural community.

Local control is described as people at the grassroots level exercising a high degree of control over education without unwanted interference from the state. Researchers have indicated that local control, when defined in this manner, results in legislators being hesitant to adopt drastic changes unless emergency conditions prevail. Local control has a direct spillover effect with respect to definitions of quality education. Many believe that quality education should be defined by local standards. Others argue that the state should set the standards for the provision of quality education and then require every local district to meet those standards. Still others believe a quality education is that which is defined by the predominant practice or by best practices.

Within the parameters of the varying definitions, certain conclusions regarding the effects of school district consolidations have been noted with fair regularity. School district consolidation is believed to result in personnel savings at the elementary level. Significant savings with respect to personnel are not found at the high school level. It appears that as school districts become larger, the salary levels of school personnel become higher.

School district consolidation almost always results in increased class size and increased breadth and depth of curricular offerings. In larger high school settings, there is a tendency toward greater specialization among the teaching staff. Specialization is less pronounced at the elementary level.

With respect to the social aspects of school district consolidation, there is general reliance on anecdotal evidence, in part because empirical data has not been collected. Anecdotal evidence indicates students who graduate from small schools have greater difficulty dealing with the socialization process at the postsecondary level. Within the elementary and high school grades, however, socialization difficulties are not a major factor for the students. The students' parents, on the

other hand, appear to have greater difficulty with the social aspects of school district consolidation.

Adults tend to expect they will remain in a community. Students generally do not have such expectations. When a community's school closes, there are no longer the traditional school-related activities. For many communities, losing the social aspect of school activities is a major change. Some maintain that by the time a community is faced with the closure of its school, the reality is that the community has already died, and the old school was merely sustaining the community in a process akin to life support.

The research indicates that the consolidation of school districts has distinct advantages and disadvantages that must be weighed and balanced. One of the questions frequently raised in considerations regarding the advantages and disadvantages of consolidation is how well small schools prepare their students for university level studies. Issues of adequate preparation become that much more significant when the desire to provide schools with a depth and breadth of curriculum offerings is juxtaposed with demographic realities.

Remedial Education

Few issues in education have attracted as much attention in recent years as college level remediation. Concerns are raised about the adequacy of elementary and secondary education, about underprepared freshmen entering colleges, and about the merits of policy initiatives that are expected to help students succeed in college while curtailing or minimizing expenditures for remedial courses.

Remedial courses are not new to higher education in this country. As early as 1874, Harvard University offered special courses to freshmen students having deficient writing skills. By the 1930s, most colleges had remedial reading courses and study skills centers. By 1998, 78 percent of American colleges and universities offered remedial courses to students.

Institutions in this state offer refresher mathematics, prealgebra, beginning algebra, intermediate algebra, pretrigonometry, reading, writing, basic English, speech improvement, communication, speed reading, vocabulary, technical vocabulary, medical vocabulary, college studies, applied study skills, listening/memory skills, basic biology, prechemistry, keyboarding, computer preparation, and writing and computer laboratories. During the fall of 1999, 2,300 students were enrolled in 141 remedial sections. During the spring of 2000, 1,115 students were enrolled in remedial sections.

Students may find themselves in a remedial class as a result of classes not taken during high school or as a result of placement test scores. Some of the students in remedial classes are self-referrals. Nontraditional students often use a remedial course as a refresher course.

During the 1998-99 school year, statistics prepared by the North Dakota University System indicated that

212 students graduated from high schools having fewer than 75 students, 605 students graduated from high schools having 75 to 149 students, 3,954 students graduated from high schools having 150 to 549 students, and 4,828 students graduated from high schools having 550 or more students. Thirteen percent of students in remedial mathematics came from schools having fewer than 75 students; 20 percent came from high schools having 75 to 149 students; 18 percent came from high schools having 150 to 549 students; and 48 percent came from high schools having 550 or more students.

Ideal Number of School Districts

Fifty years ago, there were 2,200 school districts in this state. Today, only 227 are operational. Of those school districts, 122 have fewer than 75 students in high school. Those smallest districts encompass 40 percent of the state's land mass and educate nine percent of the state's students. It is estimated that by the year 2005, 139 districts will have fewer than 75 students in high school and by the year 2010, 147 districts will have fewer than 75 students in high school. The number of districts having at least 75 students in high school are quite uniformly spread across the state, but by the year 2005, that uniformity will be lost, and by the year 2010, extreme sparsity is expected.

Nearly 70 percent of all North Dakota school districts encompass fewer than 380 square miles. Those districts have a circle radius of 11 miles or less. Only one district has a land mass in excess of 1,200 square miles. If the state were to maintain an 11-mile radius, 185 school districts would be needed. If the state were to maintain a 15-mile radius, 99 school districts would be needed. If the state were to maintain a 20-mile radius, 56 school districts would be needed. If the state were to maintain a 25-mile radius, only 36 school districts would be needed.

Using objective data, the act of identifying an ideal number of school districts would begin with the designation of 65 schools as "centers." These centers would be the 65 largest school districts, and each would have a high school population of at least 120 students. Other districts would be affiliated with the nearest centers. Additional districts would be added to ensure that none of the centers would be more than 25 miles from any satellite schools. Using this arrangement, the number of North Dakota school districts would be reduced from 227 to 104. Once actual roads were factored into the equation, a few more districts might possibly have to be added.

Committee Considerations

The committee considered a bill draft that would have raised state income tax rates for the purpose of increasing teacher salaries. Individual income tax rates would have been increased from 14 percent of federal income tax liability to 15.6 percent and would have

generated an additional \$21.4 million for distribution to school districts during each year of the biennium. The additional moneys would have amounted to an annual payment of approximately \$200 per student and would have been available only for the purpose of providing salary increases. A second version of the bill draft provided that the moneys generated could be used for both teacher salaries and benefits as determined by the school boards.

Because sales taxes are imposed by so many cities, proponents of the bill draft argued that an income tax is the only real source of additional revenue available to school districts. An income tax, it was said, is more fair because, unlike a sales tax, people with insufficient incomes are not required to pay the tax. Proponents stated that there is a constitutional obligation to provide a free, uniform, public education. They argued that if local districts are not willing to develop efficiencies, it is up to the state to provide for the students until such time as the districts are comfortable making alternate plans for the education of their students. They reiterated the need for qualified teachers at every step of the educational process, and they reiterated the need to raise the level of teacher salaries so that this state can be competitive with other states in the recruitment and retention of teachers.

Opponents suggested that it was conceptually difficult to offer all districts the benefit of an increased state tax when taxing levels among the districts show significant variation in local effort. Residents of some school districts in this state choose to tax themselves at a much higher level than residents of other districts. This level of local effort places the higher taxing districts in a better position to pay their teachers larger salaries.

The committee was not certain whether librarians, guidance counselors, and special educators, among others, should be considered "teachers" for purposes of the draft's proposed salary increase. The committee was concerned that a bill draft mandating a specific use of tax dollars eliminated a school board's decision-making flexibility and created uncertainty with respect to the collective bargaining process. Finally, the committee was uncertain whether districts that are financially able to pay higher teacher salaries but elect not to do so should benefit under the proposal.

Conclusion

The committee makes no recommendation as a result of its study of the provision of education.

SPECIAL EDUCATION STUDY

Background

Over four decades ago, a group of individuals interested in education in this state 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 citizens'

committee was formed for the purpose of encouraging the establishment of an aid program that could direct special attention to such children in order that they might overcome their special problems and become productive citizens.

The citizens' committee persuaded a Legislative Research Committee to recommend the passage of House Bill No. 540 (1951). 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."

As part of the 1951 legislation, an Advisory Council on Special Education was created. Its membership included 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 State 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's task was to establish a general state policy regarding special education and to ensure the development of a cooperative special education program characterized by the coordination of all available services. 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 student 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 had risen to \$365,000 and so had the number of children served—from 472 in 1951 to 3,055. It was estimated that as many as 15,000 children, or roughly 20 percent of all schoolchildren, would benefit from special education services.

A 1959-60 interim study by the Legislative Research Committee cited three main problems associated with the delivery of special education—a lack of space for instruction, a shortage of trained personnel, and

inadequate funds. It was the opinion of the 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. Because many school districts did not have enough special needs children to warrant their own programs, the committee suggested a county board of special education should be given the authority to contract with multiple districts for the delivery of special education services.

In response to the recommendations of the interim committee, the 37th Legislative Assembly enacted legislation authorizing the establishment of county boards of special education. The boards of special education were to be 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 in an amount up to three mills.

For the next 12 years, the state's delivery system 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. As a result of this mandate, there was considerable growth in the provision of special education services to exceptional children. Some of the school districts extended their programs while others implemented programs for the first time.

Federal Law

While North Dakota was implementing its special education program, Congress enacted legislation that mandated the provision of special education to all children with disabilities. The 1975 legislation was known as the Education for All Handicapped Children Act. In the legislation, Congress articulated the following findings:

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 of 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 but 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 distance 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 quality protection of the law.

Sixteen years later, Congress reauthorized the Education for All Handicapped Children Act and gave it a new name--the Individuals With Disabilities Education Act. Congress also updated its findings and rationale for the legislation. Congress stated that disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

Because Congress found that there had been shortcomings in the way children with special needs were being educated, Congress suggested that:

1. We hold out high expectations for such children and ensure their access to the general curriculum;
2. We strengthen the role of parents and ensure that families of such children have meaningful opportunities to participate in the education of their children;
3. We coordinate federal special education law with other local school improvement efforts to ensure that special needs children benefit from such school improvement efforts;
4. We think of special education as a service for children rather than a place where they are sent;
5. We support high-quality, intensive professional development for all personnel who work with special needs children; and
6. We focus on teaching and learning rather than on paperwork and on requirements that do not assist in improving educational results.

With respect to the purposes of the Individuals with Disabilities Education Act, Congress maintained its initial premises of ensuring that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepares them for employment and independent living" and that "the rights of children with disabilities and parents of such children are protected." Another provision that remained unchanged in the reauthorization regarded the maximum grant amount to which a state is entitled--40 percent of the average per student expenditure in public elementary and secondary schools in the United States.

Special Education in North Dakota

During the 1998-99 school year, 13,181 students (10.8 percent of the total school population) received special education services in this state. Approximately 80 percent of the special education students were diagnosed as having mild learning problems and were categorized as speech-language impaired or learning disabled. These students spent the majority of their schooldays in general education and, if needed, received support services within that setting. The remaining 20 percent of the students fell into one or more disability categories that included orthopedic impairments, visual and hearing impairments, mental retardation, and emotional disturbances.

During the 1997-98 school year, expenditures for special education (\$67,791,650) amounted to 11.2 percent of the total kindergarten through grade 12 expenditures (\$604,534,506). Federal funds constituted 8.56 percent of the total expenditures, state funds constituted 28.62 percent, and local funds constituted 62.82 percent.

For the 1999-2001 biennium, the Legislative Assembly appropriated \$46.6 million for special education. Of that amount, \$11.5 million was to be used to reimburse school districts or special education units for excess costs they incurred on student contracts, and \$400,000 was to be set aside for gifted and talented programs. Funds were to be distributed on a per student basis. The Legislative Assembly also changed the reimbursement for excess costs to provide that a school district is responsible for two and one-half times the state average per student cost plus 20 percent of all remaining costs and that the state is liable for "eighty percent of the remainder of the cost of education and related services for each such student with disabilities within the limits of legislative appropriations for that purpose."

The committee was told that during the 2001 legislative session, efforts would be made to seek a level of funding for student contract expenditures similar to that of the 1999-2001 biennium. The committee was also told that a concerted effort would be made to close the

gap between state and local expenditures for special education by at least one-third.

Conclusion

The committee concluded the greatest part of the difficulty regarding special education funding stems from the federal government's failure to shoulder its percentage share of special education costs. The committee makes no recommendation regarding special education.

ACCREDITATION STANDARDS STUDY

School Approval Requirements

State law requires that each public and nonpublic school offering elementary or secondary education be approved by the Superintendent of Public Instruction. The Superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the Education Standards and Practices Board;
2. The students are offered all subjects required by law; and
3. The school is in compliance with all local and state health, fire, and safety laws.

Approved public schools are eligible to receive foundation aid payments. However, the per student amount for each approved school that is not accredited must be \$200 less than that paid to accredited schools.

Accreditation can be obtained from the Superintendent of Public Instruction in accordance with NDCC Section 15.1-02-11, which provides that the Superintendent of Public Instruction may adopt rules governing the accreditation of public and nonpublic schools.

School Accreditation Requirements

Requirements for the accreditation of schools are found in North Dakota Administrative Code Section 67-19-01-01, et seq. There are five levels of accreditation:

1. "Accredited with commendation," which involves participation in the four phases of the state school improvement process, i.e., planning, self-study, team visitation, and followup;
2. "Accredited," which requires that a school meet all the required standards and criteria, accrue 85 percent of the total point values assigned to the optional standards and criteria that apply to the school, and achieve at least 50 percent of the point values assigned to sections governing administration, instructional personnel, instructional programs, student evaluations, student personnel services, library media services, and school policies;
3. "Accredited warned," which means that a school has been cited on a required criterion, that a school has obtained less than 85 percent of the points assigned to the optional standards and criteria, or that the school has obtained less

than 50 percent of the points assigned in any one section;

4. "Not accredited," which means that a school does not meet the qualifying standards and criteria or that the citations issued for the previous years have not been removed; and
5. "Nonclassified," which means that a school is not seeking accreditation.

Schools are reviewed annually to determine whether they comply with the accreditation rules. If a school has been cited as being in violation of the accreditation rules, the school is given until March 31 of the following school year to remedy the deficiency. Thereafter, the school loses accreditation. Optional standards and criteria are reviewed on a two-year cycle. A school must accrue 85 percent of the total points and achieve at least 50 percent of the point value assigned in each section in order to become and remain accredited.

Any appeals regarding a school's accreditation status are decided by the State Accreditation Committee. This committee consists of members appointed by the executive boards of the North Dakota School Boards Association, the North Dakota Council of Educational Leaders, the North Dakota Association of Elementary School Principals, the North Dakota Association of Secondary School Principals, the North Dakota Education Association, and the North Dakota Association for Supervision and Curriculum Development.

Requirements for school accreditation have been organized into the following eight categories:

1. "Administration," which includes qualifications and time assignments for superintendents, assistant superintendents, curriculum or instructional directors, principals, and assistant principals;
2. "Instructional personnel," which includes teacher certification, general preparation, specific subject area preparation, professional growth, and professional development plans;
3. "Instructional programs," which includes written plans for curriculum assessment, development, implementation and evaluation, minimum units of credits to be taught annually, required courses, elective courses and cooperative courses, the use of study halls, and standards for class size and teacher preparation time;
4. "Library media services," which includes the scope of services, school library media personnel qualifications and time assignments, and library expenditures per student;
5. "School improvement," which includes a requirement for written mission statements, school evaluations, improvement plans, and progress reports;
6. "School policies," which includes teacher handbooks, student and parent handbooks, written attendance requirements, and written school

board policies regarding the promotion and retention of students;

7. "Student evaluations," which includes written programs for the utilization of standardized test scores and other evaluative data; and
8. "Student personnel services," which includes the coordination and provision of counseling and guidance services, social and psychological services, health services, and counselor qualifications and time assignments.

Accreditation requirements have historically been input-based. If a school complied with the requisite number of requirements, the school was deemed to be worthy of accreditation. In recent years, however, a new line of thinking has evolved. Meeting accreditation requirements, while significant, has been found lacking in several major respects. Accreditation requirements fail to specifically address the content that students are being taught, how students are being taught, and whether students are learning that which they are being taught. Accreditation requirements make no provisions for the assessment of students based on that which they are taught. For these reasons, the committee chose to focus not on accreditation requirements but rather on the development of standards and assessments.

Conclusion

The committee makes no recommendation as a result of its study of accreditation standards.

STATEWIDE ACADEMIC STANDARDS STUDY

Background

The educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation and a people. . . . We have, in effect been committing an act of unthinking, unilateral educational disarmament.

The above quote is taken from a 1983 report by the National Commission on Excellence in Education--A Nation at Risk. The report, which is viewed by many as the initiating event of the modern standards movement, prompted widespread concerns about the educational preparation of our youth. Reacting to the report and the concerns it raised, then President Bush and the nation's governors met at the Charlottesville Education Summit and proceeded to establish six broad goals for education that were to be reached by the year 2000. Among the six goals were the following:

- That American students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship,

further learning, and productive employment in our modern economy.

- That American students will be first in the world in science and mathematics achievement.

The goals were again articulated in then President Bush's 1990 State of the Union Address. In response, Congress established the National Education Goals Panel and the National Council on Education Standards and Testing and charged these two groups with addressing unprecedented questions such as the subject matter to be addressed, the types of assessments to be used, and the standards of performance. National subject matter organizations began to develop standards in their respective areas. By the mid-1990s, 48 states were involved in some level of standards development.

Americans . . . expect strict standards to govern construction of buildings, bridges, highways, and tunnels; shoddy work would put lives at risk. They expect stringent standards to protect their drinking water, the food they eat, and the air they breathe . . . Standards are created because they improve the activity of life. National Standards in American Education: A Citizens Guide (1995).

Former Assistant Secretary of Education Diane Ravitch asserts that just as standards improve the daily lives of Americans, so too will they improve the effectiveness of American education. "Standards can improve achievement by clearly defining what is to be taught and what kind of performance is expected." *Id.* A number of recent surveys indicate that most Americans strongly support higher standards that are clear and specific. To date, however, no consensus has emerged with respect to what form standards should take nor how they should be used. The definitional confusion can be illustrated using the following three standards from the same document.

- Students use estimation to check the reasonableness of results.
- Students recognize and appreciate geometry in their world.
- Students use mathematics in other curriculum areas.

The first example describes a skill or an ability that a person might use to solve a real-life problem. When at the gas pump, a person might use estimation to determine whether the total generally squares with the price per gallon multiplied by the number of gallons pumped. The second example does not describe a commonly used skill. Not many day-to-day situations require an ability to recognize and appreciate geometry. The second example is more of a curricular goal—a perspective that a student might acquire as a consequence of successfully completing a study of mathematics. The third example is not a student knowledge or skill but

rather a recommendation regarding the development of the curriculum to work in concert with mathematics instruction.

Standards and Assessments in Other States

Any existing confusion or disagreement regarding the form and use of standards has not served to either slow the development and implementation of standards nor their inherent offshoots—assessments and accountability. Forty-eight states engage in some form of student testing, and 36 states publish annual report cards. Nineteen states publicly rate the performance of all their schools or at least identify low-performing schools. Sixteen states have the power to close, take over, or overhaul chronically failing schools. Fourteen states provide monetary rewards for individual schools based on performance. Nineteen states require students to pass state tests as a condition of high school graduation.

Discussions regarding assessments and accountability also have inherent challenges. What is the best way to measure student performance? Should a high school senior be denied a diploma if the student does not pass a state test? What should be done with a school that consistently fails to show improvement? When is it time to close a failing school? Approaches to standards and accountability generally take one of two forms. The first line of thinking is that schools and students will improve if they are given enough resources, support, information, and encouragement. The second line of thinking is that in order for schools to improve, they need a substantial, external push. Texas and Connecticut are two of six states whose fourth and eighth graders have shown recent improvements in their National Assessment for Educational Performance mathematics scores.

Texas epitomizes the hard-line approach. Schools and districts can receive cash awards for exemplary student performance but are subject to intervention and ultimate takeover if achievement falls below minimum standards. High school students must pass state tests to graduate. Education schools lose their accreditation if too many of their graduates fail teacher licensing exams. For the first time last year, an evaluation system linked teachers' appraisals to schoolwide test scores.

Connecticut relies on a more low-key approach. The state publishes report cards on every school and includes the school's performances on statewide tests. It also gives grants to districts that have shown substantial progress over time. There are, however, no explicit sanctions for schools that fail to make progress. Connecticut has drafted new standards for teacher licensure, raised pay for beginning teachers, and financed a teacher mentoring program.

Early Standards and Assessments in North Dakota

Section 2 of Article VIII of the Constitution of North Dakota directs the Legislative Assembly to provide for a "uniform system of free public schools throughout the state," and Section 4 directs the Legislative Assembly to "take such other steps as may be necessary to prevent illiteracy" and "secure a reasonable degree of uniformity in course of study. . . ." Neither the state's Constitution nor its statutes, however, reference what students should know and be able to do.

During the 1940s, North Dakota had a state-driven curriculum. With the passage of time and advancements in publishing, the state-driven curriculum was replaced by a textbook-driven curriculum. Textbooks, however, are directed toward meeting the needs of large user states such as California and Texas. What North Dakota schoolchildren were being taught depended on which textbooks were purchased. This allowed for no predetermined continuity from school to school nor even from grade to grade within the same schools. It was not until 1993 that the state began to identify what global skills graduates should be able to demonstrate. These early efforts came in an environment that defined graduation criteria in terms of courses completed and assumed that competencies were acquired if the courses were completed.

Before the 1990s, the Superintendent of Public Instruction published curriculum guidebooks for each subject area. The guidebooks included extensive detail for the development of a subject area's curriculum and often even included lesson plans. Over time, the curriculum guidebooks fell into disuse. Their extensive detail was considered burdensome by school districts and gave the impression to some that the state was too concerned with what should otherwise be a local concern—curriculum design. The decision was made to replace the guidebooks with smaller, leaner documents that outlined general areas of competence.

In 1993 the Superintendent of Public Instruction released the North Dakota Curriculum Frameworks. The frameworks focused generally on 10 subject areas. While the frameworks offered a practical guide to the field's request for content guidance, they were soon found to be lacking in the area of performance indicators. About the same time the North Dakota Curriculum Frameworks were disseminated, the trend nationally moved toward having more clearly defined content standards that would identify, clarify, and prioritize learning. The Superintendent then began to develop content standards in key subject areas. English language arts was the first area to have content standards developed. Thereafter, content standards were developed for mathematics, science, social studies, the arts, and health.

Components of a Content Standard

A content standard consists of a standard, a benchmark, specific knowledge items, and performance activities. A standard is a single concise statement that identifies what students should know and be able to do. Global in nature, standards establish broad categories of knowledge or skill required of students within a subject area.

A benchmark is the translation of a standard into what students should understand and be able to do at a developmentally appropriate level, such as grades 4, 8, and 12. Benchmarks take broad content areas and break them into smaller, measurable knowledge and skill units. Whereas a standard might require students to gather and organize information, the grade appropriate benchmarks might require students to use simple organizational strategies, use appropriate reference tools, and understand the main idea and supporting detail.

Specific knowledge items support the standards and benchmarks by clarifying their intent. They often include lists of associated issues that further embellish and specify the otherwise general standard statements. In using organization strategies and appropriate reference tools, students might have to deal with sequence patterns, lists, problem/solution patterns, story maps, and parts of a story such as the introduction, body, and conclusion, etc.

Performance activities offer additional assistance to users by illustrating standards, benchmarks, and specific knowledge items in terms of tangible, real-life scenarios. In dealing with sequence patterns, lists, problem/solution patterns, story maps, and the parts of a story, students might have to use a variety of reference tools to research the history of a particular era and use information gathered from the various reference material to create a timeline depicting the main events.

Process for Content Standards Development

Responsibility for the design and implementation of content standards in North Dakota rests with the Standards, Assessments, Learning, and Teaching team. All team members are North Dakota educators and are appointed by the Superintendent of Public Instruction. Team members work according to established protocols that call for reviews of National Curriculum Association documents, other states' standards, and various best-practice publications. The team is assisted by the State Curriculum Council. This council consists of approximately 40 curriculum specialists. The council's purpose is to provide advice and guidance to the team on all matters related to curriculum development.

Once the Standards, Assessments, Learning, and Teaching team has proposed the content standard, the Superintendent of Public Instruction appoints representatives from school districts statewide, with the recommendation of the team, to develop the remaining

components of the final content standards document. These representatives work as subject writing teams.

Upon completion of the content standards, the team conducts a final review to ensure that the standards meet protocol requirements. The team then recommends adoption of the standards to the Superintendent of Public Instruction. Once approved, content standards are distributed to local districts for their use.

Up to this point, content standards have been voluntary. Districts are free to implement the content standards, develop their own standards, or teach without any standards. If, however, a district elects to use the state content standards, the district appoints local curriculum development teams to prepare local curriculum guides. These guides are to be more detailed than the state content standards, and they are to be designed with the uniqueness of the district in mind.

Assessments and Accountability

The development of content standards is geared to clarifying assumptions and identifying goals for education. Content standards articulate what is wanted for children, what children need to know and be able to do, and how the state sees its responsibility to students.

North Dakota students have historically demonstrated high levels of student performance when compared to the national norms. However, when North Dakota students take the National Assessment of Educational Performance test and are evaluated in terms of standards of expected learning, approximately 70 percent of the students score below the expected levels of proficiency.

This level of subproficient performance highlights the need to hold the educational system accountable for providing clear, comparable educational opportunities to all students, clarifying what level of proficiency means in the state, providing meaningful ways to measure student performance overall, and reporting performance results to the parents and taxpayers.

The link between content standards and meaningful assessments is the identification of performance standards--measures by which students are assessed against the content standards. In the past, any assessment of students has been based on random test items, without any reference to a set standard of knowledge. If performance standards are developed and implemented, a school obtains a meaningful way of assessing not only the performance of students against standards, but also a means of assessing the performance of schools with a view to improving their educational efforts. Students would be held accountable based on set standards, and schools would be held accountable based on set standards.

Committee Considerations

The committee reviewed two bill drafts. One bill draft required the Superintendent of Public Instruction to

develop state academic content standards, applicable to grades 4, 8, and 12, in all core subject areas; to distribute the content standards to all public and nonpublic schools in the state; and to ensure that the content standards would be revised at least once every five years.

Before the beginning of the 2002-03 school year, each school district and each nonpublic school was to adopt the state academic content standards in the areas of mathematics, English language arts, science, and social studies, or adopt or develop their own academic content standards applicable to the stated areas. If a school district used content standards other than those provided by the state, the content standards would have to be equal to or more rigorous than the state standards. This determination was to be made by the Superintendent of Public Instruction.

Before the beginning of the 2003-04 school year, each school district and each nonpublic school would have to adopt the state academic content standards applicable to grades 4, 8, and 12, in the areas of health, the arts, physical education, world languages, and technology. As with the earlier standards, a school or school district could adopt or develop its own standards.

Beginning with the 2002-03 school year, each school district and nonpublic school was directed to adopt or develop curricula for grades 4, 8, and 12, which are aligned to the academic content standards in mathematics and English language arts. Beginning with the 2003-04 school year, each school or school district was directed to adopt or develop curricula for grades 4, 8, and 12, which are aligned to the academic content standards in science and social studies. Beginning with the 2004-05 school year, each school or school district was required to adopt or develop curricula for grades 4, 8, and 12, which are aligned to the academic content standards in health, the arts, physical education, world languages, and technology.

The other bill draft, which dealt with content standards and assessments, would have included all the requirements of the first draft and would have provided that the Superintendent of Public Instruction would develop and make available student assessments for English language arts and mathematics. The stated purpose of the assessments was to measure student knowledge and assist in determining whether the schools are meeting the academic expectations set forth in their school improvement plans. By the beginning of the 2002-03 school year, each school and school district was to have an assessment plan in place. Each school and school district was given the responsibility for publishing the results of its student assessments.

The enforcement mechanism for both bill drafts was initially the accreditation process. The committee, however, determined that if content standards and assessments were concepts worthy of application to accredited schools, they should be worthy of application

to all schools. Consequently, the committee determined that the enforcement mechanism for both bill drafts should be the school approval process. Thereafter, the committee dealt with the separate concepts of standards and assessments.

Proponents of the second bill draft indicated that setting forth in clear and concise terms what a student needs to know and be able to do and, in addition, providing valid methods of assessing students are hallmarks of quality schools. They indicated that content standards need to be accompanied by appropriate assessments or methods of measuring student progress. They said to do otherwise defeated the intent of ensuring that every North Dakota student would have access to an ordered, appropriate, and quality educational experience. Opponents argued that North Dakota students have very high achievement rates, despite not being subjected to mandatory state standards and assessments. They suggested that assessments have absolutely nothing to do with improving student achievement or improving student learning. They also indicated that schools and school districts would need significant funding for professional development in order to ensure that any mandated standards and accompanying assessments would be properly understood and implemented.

Recommendation

The committee recommends Senate Bill No. 2036 to require the development and phased-in implementation of state academic content standards for all core academic areas. The standards would be applicable to

grades 4, 8, and 12. The committee was concerned that the costs and mechanics of implementing a statewide system of assessments was not known with certainty and that, consequently, the financial impact to districts could not be known with certainty. The committee, however, determined that requiring the phased-in implementation of content standards for all core academic areas was an important first step in ensuring educational quality for all North Dakota students.

CONTENT OF FINANCIAL REPORTS - TRANSFER OF MONEYS FROM SCHOOL DISTRICT FUNDS

School districts in North Dakota are required to provide reports to the Superintendent of Public Instruction through a uniform accounting system. If reports are not presented in a timely fashion, the Superintendent is authorized to withhold foundation aid payments until the reports are forthcoming. Because accounting methods have inherent flexibility, the Superintendent has attempted to standardize the reports by developing various accounting manuals. The first such manual dates back to 1979. In recent years, attempts have been made to update and otherwise revise the manual. Testimony indicated that the Superintendent is in a position only to encourage compliance with the accounting requirements set forth in the manual. To have greater oversight, and consequently greater consistency, the Superintendent indicated that he would need to have statutory authority allowing for an audit function and an accompanying increase in department staff.

EDUCATION SERVICES COMMITTEE

The Education Services Committee was assigned one study. House Concurrent Resolution No. 3007 directed a continued study of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education, for the purpose of recommending changes to laws that are found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction. The committee also was directed to receive a progress report from the Education Standards and Practices Board regarding implementation of the reciprocal acceptance of teaching certificates issued by other states. Committee members were Senators Ray Holmberg (Chairman), Tim Flakoll, Layton Freborg, Jerome Kelsh, Pete Naaden, David O'Connell, and Rolland W. Redlin and Representatives Michael D. Brandenburg, Bruce A. Eckre, Lyle Hanson, RaeAnn G. Kelsch, Jon Martinson (until his resignation from the Legislative Assembly on June 30, 2000), David Monson, Darrell D. Nottestad, Dorvan Solberg, and Laurel Thoreson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

PROVISIONS OF NORTH DAKOTA CENTURY CODE TITLE 15 WHICH RELATE TO ELEMENTARY AND SECONDARY EDUCATION

Background

Section 11 of 1995 Senate Bill No. 2013 directed the State Auditor to conduct a performance audit of the Department of Public Instruction. The State Auditor presented the audit to the Legislative Audit and Fiscal Review Committee during the 1995-96 interim. Because the audit addressed a number of issues relating to education programs and to their administration, the Legislative Council chairman, at the request of the Legislative Audit and Fiscal Review Committee, directed the 1995-96 interim Education Finance Committee to review the audit and make recommendations. The Education Finance Committee found that the issues highlighted within the audit were indicative of a pressing need to review all the provisions of Title 15 which relate to elementary and secondary education--various provisions were duplicative, inconsistent, or unclear in intent or requirements, and many provisions were illogically arranged.

The 1995-96 interim Education Finance Committee concluded that a title rewrite was a project of considerable scope. It would require a significant time commitment on the part of a committee, together with significant involvement by parties having legal, educational, and administrative expertise. The committee recommended a Legislative Council study to undertake such a task. The

task was assigned to the 1997-98 interim Education Services Committee.

Objectives and Scope of Committee's Efforts

The 1997-98 interim Education Services Committee determined that the rewrite of North Dakota Century Code (NDCC) Title 15 would necessarily involve addressing laws found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction. However, the committee also determined that an equally important objective was to ensure that the rewritten sections accurately reflected the manner in which business was conducted at the school level, the school district level, and within the Department of Public Instruction. The ultimate objective was to craft a document that would clearly indicate rights, duties, obligations, and consequences with respect to the provision of elementary and secondary education in the state. Because the committee discovered the scope of the undertaking would preclude its completion without compromise of the stated objectives, the committee determined that only a portion of the title should be addressed during the 1997-98 interim. The committee determined that chapters that did not relate directly to kindergarten through grade 12 education would remain within Title 15, while those that did relate directly to kindergarten through grade 12 education would become part of the new Title 15.1. This also gave the committee an opportunity to arrange chapters in a conceptually appropriate manner. Of 36 proposed chapters, 16 were rewritten and the remaining 20 chapters were reserved for a future effort during the 1999-2000 interim.

When the 1999-2000 interim Education Services Committee began its work, it reiterated the stated objectives of the 1997-98 interim Education Services Committee and set forth to complete the following chapters:

15.1-13	Education Standards and Practices Board
15.1-14	Superintendent and Director Dismissal
15.1-15	Teacher Dismissal
15.1-16	Teacher Employment Contracts
15.1-17	Teacher Personnel Issues
15.1-18	Teacher Qualifications
15.1-20	Compulsory Attendance
15.1-21	Courses and Curricula
15.1-22	Kindergartens
15.1-23	Home Education
15.1-27	School Finance
15.1-28	State Tuition Fund
15.1-29	Payment of Tuition
15.1-30	Student Transportation
15.1-31	Open Enrollment
15.1-32	Special Education
15.1-33	Multidistrict Special Education Units
15.1-34	Boarding Home Care
15.1-35	Child Nutrition and Food Distribution Programs
15.1-36	School Construction

Substantive Changes

The committee was advised of the North Dakota Supreme Court decision in *City of Fargo v. Annexation Review Commission*, 148 N.W.2d 338 (N.D. 1966). In that case, the court pointed out the Revised Code of 1943 had been prepared by the Code Revision Commission and subsequently adopted by the Legislative Assembly. The court noted, however, that because the record did not indicate an intention to make substantive changes, the Legislative Assembly did not intend to make substantive changes. Because of the impact of this opinion on statutory revision efforts, especially revisions that include substantive changes, the committee determined that any substantive changes should be documented in this report.

The following table sets forth the proposed North Dakota Century Code sections that contain substantive changes and briefly describes those changes:

15.1-13-01	Defines an administrator for purposes relating to the Education Standards and Practices Board
15.1-13-02	Includes an option to appoint a dean of a college of education to the Education Standards and Practices Board
15.1-13-29	Eliminates the Administrator's Professional Practices Board and directs that duties formerly performed by the Administrator's Professional Practices Board be undertaken by a subcommittee of the Education Standards and Practices Board
15.1-14-13 through 15.1-14-32	Sets forth the procedure for the evaluation, renewal, nonrenewal, and discharge of multidistrict special education unit directors and area vocational and technology center directors
15.1-15-04	Provides that if teacher contract negotiations are ongoing, provisions regarding required notices and responses are suspended until negotiations are completed
15.1-15-05	Provides that March 1 is the earliest date for notice of nonrenewal
15.1-17-03	Provides an intermediate level of appeal to the school district superintendent for issues relating to teacher personnel files
15.1-20-02	Clarifies that appeals regarding compulsory attendance are made to the district court
15.1-21-01	Modernizes terminology and clarifies the list of required courses
15.1-21-02	Modernizes terminology and clarifies the list of required courses
15.1-21-03	Clarifies definition of a unit
15.1-22-01	Removes the requirement that a petition for the establishment of a kindergarten have at least 25 signatures
15.1-23-09	Removes requirement that students receiving home education take a standardized test in grade three
15.1-27-08	Removes per student payment for unapproved high schools
15.1-27-15	Refers to "isolated" schools rather than "small but necessary schools"

15.1-29-03	Requires a school board to take into account the best interest of all affected parties when determining whether to send students to another school district; Requires that a petition be signed by a majority of those residents who voted in the most recent school district election rather than by a majority of qualified electors
15.1-29-04	Refers to specific dates on which tuition payments are due
15.1-29-07	Refers to specific dates on which tuition payments are due
15.1-30-01	Clarifies that reimbursement is for meals and lodging
15.1-30-03	Requires written requests for payment
15.1-30-05	Provides a timeframe within which a district's transportation costs are calculated
15.1-30-08	Requires that a transportation contract contain the method by which an equitable adjustment of compensation will be calculated if route changes are necessitated
15.1-32-01	Adds the definition of related services and updates disability designations
15.1-32-08	Clarifies that administrative rules regarding special education are to be issued by the Superintendent of Public Instruction rather than the Director of Special Education
15.1-32-14	Omits the requirement that a student's individualized education program must be written during the last quarter of the school calendar to obtain payment for special education summer programs
15.1-32-22	Clarifies that attorneys' fees and costs are awarded by a court
15.1-32-23	Extends by two years the statutory process for changes in the credentialing of special education teachers
15.1-33-01	Eliminates reference to a corporate seal
15.1-33-04	Clarifies that the organizational plan of a multidistrict special education unit must provide for the manner in which board members are appointed
15.1-35-03	Omits the Superintendent of Public Instruction's authority to accept gifts for use in the child nutrition and food distribution program
15.1-35-05	Omits the five-year maximum preservation period for child nutrition and food distribution program records
15.1-35-06	Expands the purpose of child nutrition and food distribution program appraisals

Omitted Provisions

During the study, the committee determined that a number of NDCC Title 15 provisions were unnecessary or duplicative of other provisions. The committee consequently directed that such provisions be omitted from proposed Title 15.1. The following table lists sections omitted and the reason for their repeal:

15-34.1-02	Outdated
15-34.2-05	Duplicative of Section 15.1-07-21
15-34.2-07.2	New section in Chapter 15.1-09
15-35-15	Unnecessary
15-38-10	Outdated
15-38-11	Outdated
15-38-12	Constitutionally suspect
15-38.1-01	Unnecessary statement of purpose
15-40.1-02	Unnecessary
15-40.1-07.2	Unnecessary
15-40.1-07.5	Outdated
15-40.1-15	Unnecessary definition
15-43-01	Unnecessary
15-43-02	Unnecessary
15-43-03	Unnecessary
15-43-05	Unnecessary
15-43-12	Unnecessary
15-45-03	Duplicates authority of Section 15.1-02-11
15-47-00.1	Unnecessary definition
15-47-34	Outdated
15-59.2-03	Outdated
15-60-01	Unnecessary definition

Cross-Reference Table

The following table sets forth sections of NDCC Title 15 which were the subject of the committee's study this interim and identifies their proposed new placement:

15-21-09.1	15.1-21-05
15-21.1-08	New section in Chapter 15.1-19
15-29-08.5	15.1-21-06
15-29-08.6	15.1-21-07
15-34.1-00.1	15.1-20-04
	15.1-23-01
15-34.1-01	15.1-20-01
15-34.1-03	15.1-20-02
15-34.1-04	15.1-20-03
15-34.1-06	15.1-23-02
	15.1-23-03
	15.1-23-04
	15.1-23-05
	15.1-23-06
15-34.1-07	15.1-23-07
	15.1-23-09
	15.1-23-10
	15.1-23-11
	15.1-23-12
	15.1-23-13
15-34.1-08	15.1-23-19
15-34.1-09	15.1-23-08
15-34.1-10	15.1-23-18
15-34.1-11.1	15.1-23-17
15-34.1-12	15.1-23-14
15-34.1-12.1	15.1-23-15
15-34.1-13	15.1-23-16
15-34.2-01	15.1-30-01
15-34.2-03	15.1-30-02
15-34.2-04	15.1-30-03
15-34.2-06	15.1-30-04
15-34.2-06.1	15.1-30-05
15-34.2-07	15.1-30-06
15-34.2-07.1	15.1-30-11
15-34.2-08	15.1-30-12

15-34.2-09	15.1-30-07
	15.1-30-08
	15.1-30-09
	15.1-30-10
15-34.2-10	15.1-30-08
15-34.2-11	15.1-30-13
15-34.2-15	15.1-30-14
15-34.2-16	15.1-30-15
15-35-01.1	15.1-36-01
15-35-16	15.1-36-05
15-35-17	15.1-36-05
15-36-01	15.1-13-10
15-36-01.1	15.1-13-16
15-36-08	15.1-13-11
	15.1-13-12
15-36-11	15.1-13-17
15-36-11.1	15.1-13-17
15-36-11.2	15.1-13-20
15-36-11.3	15.1-13-21
15-36-12	15.1-13-18
	15.1-13-19
15-36-14.1	15.1-13-31
15-36-15	15.1-13-25
	15.1-13-28
15-36-15.1	15.1-13-26
15-36-16	15.1-13-24
	15.1-13-25
15-36-17	15.1-13-27
15-36-18	15.1-13-23
15-37-01	15.1-13-15
15-37-02	New section in Chapter 15-10
15-37-03	New section in Chapter 15-10
15-38-01	15.1-14-01
	15.1-14-02
15-38-07	15.1-21-01
15-38-08	15.1-21-01
15-38-09	15.1-21-01
15-38-16	15.1-13-01
15-38-17	15.1-13-02
	15.1-13-03
	15.1-13-04
	15.1-13-05
	15.1-13-06
	15.1-13-07
15-38-18	15.1-13-08
	15.1-13-09
	15.1-13-30
15-38-18.1	15.1-13-22
15-38-18.2	15.1-13-13
	15.1-13-14
15-38-19	15.1-13-24
15-38.1-02	15.1-16-01
15-38.1-03	15.1-16-02
	15.1-16-03
15-38.1-04	15.1-16-04
15-38.1-05	15.1-16-05
15-38.1-06	15.1-16-06
15-38.1-07	15.1-16-07
15-38.1-08	15.1-16-08
15-38.1-09	15.1-16-09
15-38.1-10	15.1-16-10
15-38.1-11	15.1-16-11
15-38.1-11.1	15.1-16-12
15-38.1-12	15.1-16-13

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 15-40.1-01
 15-40.1-04.1
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 15-40.1-07.1
 15-40.1-07.3
 15-40.1-07.4
 15-40.1-07.6
 15-40.1-07.7
 15-40.1-07.8
 15-40.1-07.9
 15-40.1-07.10
 15-40.1-07.11
 15-40.1-08
 15-40.1-08.1
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 15-40.2-03
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 15-40.3-01
 15-40.3-02

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 15-41-24
 15-41-25
 15-41-28
 15-44-01
 15-44-02
 15-44-03
 15-45-01
 15-45-02
 15-45-04
 15-47-26
 15-47-27
 15-47-27.1
 15-47-27.2
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15.1-31-03
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 15.1-18-04

15-47-46	15.1-18-02
15-47-52	15.1-18-01
15-54-01	15.1-35-01
15-54-02	15.1-35-02
15-54-03	15.1-35-03
15-54-04	15.1-35-04
15-54-05	15.1-35-05
15-54-06	15.1-35-06
15-54-09	15.1-35-07
15-59-01	15.1-32-01
15-59-02.1	15.1-32-01
	15.1-32-05
	15.1-32-12
	15.1-32-13
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	15.1-32-17
15-59-03	15.1-32-06
15-59-04	15.1-32-08
	15.1-32-10
15-59-04.1	15.1-32-11
15-59-05	15.1-32-02
	15.1-32-07
	15.1-32-09
15-59-05.1	15.1-32-21
15-59-05.2	15.1-32-03
15-59-05.3	15.1-32-23
15-59-06	15.1-32-14
15-59-06.1	15.1-32-04
15-59-06.2	15.1-32-18
15-59-07	15.1-32-15
15-59-07.2	15.1-32-19
15-59-08	15.1-32-20
15-59-10	15.1-32-22
15-59.2-01	15.1-33-01
	15.1-33-02
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15-59.3-01	15.1-34-01
15-59.3-02	15.1-34-02
15-59.3-03	15.1-34-13
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15-59.3-11	15.1-34-15
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Cross-Reference for Proposed Sections

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15.1-13-15	15-37-01
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15.1-13-29	New section
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15.1-14-01	15-38-01
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15.1-14-03	15-47-38.2
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	15-38-09	15.1-27-33	15-40.1-07.11
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Committee Recommendations

The committee recommends House Bill No. 1045 to rewrite those portions of NDCC Title 15 which relate to the Education Standards and Practices Board, superintendent and director dismissal, teacher dismissal, teacher employment contracts, teacher personnel issues, teacher qualifications, compulsory attendance, courses and curricula, kindergartens, home education, school finance, the state tuition fund, the payment of tuition, student transportation, open enrollment, special education, multidistrict special education units, boarding home care, child nutrition and food distribution programs, and school construction.

The committee recommends House Bill No. 1046 to accompany the rewrite of Title 15 provisions. This bill reconciles references to Title 15 provisions found in other portions of the North Dakota Century Code and reconciles inconsistencies and irregularities.

The committee recommends House Concurrent Resolution No. 3002 directing a study of the completed revision of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education for the purpose of reconciling any inconsistencies or irregularities.

RECIPROCAL ACCEPTANCE OF TEACHING LICENSES OR CERTIFICATES - REPORT

In 1999 the Legislative Assembly enacted NDCC Section 15-36-11.2. This section authorizes the

Education Standards and Practices Board to grant an interim reciprocal teaching license to an individual who holds a teaching license or certificate from another state, provided:

- The teaching license or certificate awarded the applicant by the other state was based on at least a baccalaureate degree with a major that met the issuing state's requirements in elementary education, middle-level education, or a content area taught in public high schools;
- The teaching license or certificate awarded the applicant by the other state required the completion of a professional education sequence from a state-approved teacher education program and included supervised student teaching;
- The applicant submitted to a background check such as that required of initial applicants in this state; the background check revealed nothing for which an applicant from this state would be denied initial certification; and
- The applicant submitted a plan for meeting all requirements necessary to become a licensed teacher in this state.

An interim reciprocal certificate granted under this section is valid for two years. An individual teaching under an interim reciprocal certificate is required to submit to the Education Standards and Practices Board evidence of progress on the individual's education plan at the end of the two-year period. The interim reciprocal certificate may be renewed for one additional two-year period if satisfactory progress is demonstrated.

In 1999 the Legislative Assembly also directed the Education Standards and Practices Board to pursue the

reciprocal acceptance of teaching licenses or certificates issued by other states and to present a progress report regarding the pursuit.

The portability of teaching licenses or certificates has been discussed by educational organizations for numerous decades. The entity taking the lead role with respect to interstate reciprocity is the National Association of State Directors of Teacher Education and Certification. The association has gathered information regarding state licensure or certification requirements and has encouraged 43 states and Guam to participate in the National Association of State Directors of Teacher Education and Certification Interstate Contract. The contract, which runs from 2000 to 2005, ensures certain commonalities among the parties. Among these commonalities are the completion of an approved program for initial licensure or certification or the completion of an approved program, together with certification, and teaching experience for those not seeking initial licensure. The contract also contains optional terms regarding reciprocity for alternative preparation, certification and experience, multiple level licenses, and certification by the National Board for Professional Teaching Standards.

The Education Standards and Practices Board signed the National Association of State Directors of Teacher Education and Certification Interstate Contract on May 4, 2000. The North Dakota statutory requirements for reciprocity were attached to the contract and individuals seeking reciprocity will be given a maximum of four years to meet North Dakota licensure requirements.

ELECTRIC INDUSTRY COMPETITION COMMITTEE

North Dakota Century Code (NDCC) Sections 54-35-18 through 54-35-18.3 create the Electric Industry Competition Committee. Section 54-35-18 states that the economy of North Dakota depends on the availability of reliable, low-cost electric energy and that there is a national trend toward competition in the generation, transmission, and distribution of electric energy, and that this competition has potential benefits and adverse impacts on the state's electric suppliers as well as on their shareholders and customers and citizens of this state.

Section 54-35-18.1 outlines the composition of the committee and directs the committee to study the impact of competition on the generation, transmission, and distribution of electric energy within this state and on this state's public utilities, rural electric cooperatives, municipal electric utilities, and power marketers.

Section 54-35-18.2 outlines the study areas the committee is to address in carrying out its statutory responsibilities. This section provides that the committee is to study the state's electric industry competition and electric suppliers and financial issues, legal issues, social issues, and issues related to system planning, operation, and reliability and is to identify and review potential market structures.

Section 54-35-18.2 also requires the committee to study statutes relating to the extension of electric lines and facilities and the provision of electric service by public utilities and rural electric cooperatives within and outside the corporate limits of a municipality and to specifically address the criteria used by the Public Service Commission under NDCC Chapter 49-03 in determining whether to grant a public utility a certificate of public convenience and necessity to extend its electric lines and facilities to serve customers outside the corporate limits of a municipality and the circumstances under which a rural electric cooperative may provide electric facilities and service to new customers and existing customers within municipalities being served by a public utility.

Committee members were Representatives Al Carlson (Chairman), Robert Huether, and Matthew M. Klein and Senators Randel Christmann, Pete Naaden, and Larry J. Robinson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

ELECTRIC INDUSTRY RESTRUCTURING

Background

Establishment of the committee in 1997 reflected the Legislative Assembly's concern that the electric industry is changing rapidly, and if competition is to be introduced into North Dakota, it should be done in a fair and

equitable manner. Nationally, builders of new technology generating plants, the natural gas industry, and states with high electric rates or excess generating capacity are promoting electric industry restructuring. Arguments put forward for restructuring or implementing competition in the electric industry include greater customer choice, the possibility that open competition may lower costs, encourage generating efficiency, and allocate capital. Risks and challenges of retail competition, however, include maintaining reliability of supply, pricing outcomes in which some customers may benefit at the expense of others, and allocating stranded costs. The impetus for electric industry restructuring also has come from large industrial and commercial energy users that are opposed to subsidizing residential electricity users.

Traditional Rationale for Regulation

Under the current industry structure, electricity is provided to retail customers by utilities that have geographic monopolies for the provision of electric service within their service territories. Customers within a utility's service territory must purchase their electric services from that utility. These services include generation, transmission, distribution, customer service, meter reading, demand-side management, and aggregation and ancillary services.

Generally, three major types of electric utilities exist—investor-owned utilities, municipal and other government-owned utilities, and rural electric cooperatives. States regulate investor-owned utilities regarding their profits, operating practices, and pricing to end-use retail customers, while the Federal Energy Regulatory Commission governs the pricing of wholesale bulk power sales and transmission services. Although the committee is directed to study the impact of competition on the generation, transmission, and distribution of electric energy, nationwide, the restructuring debate is over whether and how to separate the generation of electricity from other electric services in order to allow retail customers to shop for the electricity supplier of their choice.

In North Dakota, the Public Service Commission regulates electric utilities engaged in the generation and distribution of light, heat, or power. North Dakota Century Code Section 49-02-03 grants to the Public Service Commission the power to supervise and establish rates. This section provides:

The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust,

unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

Concerning electric utility franchises, NDCC Section 49-03-01 provides that an electric public utility must obtain a certificate of public convenience and necessity from the Public Service Commission before constructing, operating, or extending a plant or system. Similarly, the state's Territorial Integrity Act, Sections 49-03-01.1 through 49-03-01.5, requires an electric public utility to obtain a certificate of public convenience and necessity before constructing, operating, or extending a public utility plant or system beyond or outside of the corporate limits of any municipality. However, Section 49-03-01.3 exempts electric public utilities from the requirement that they obtain a certificate of public convenience and necessity for an extension of electric distribution lines within the corporate limits of a municipality in which it has lawfully commenced operations provided the extension does not interfere with existing services provided by rural electric cooperatives or another electric public utility within the municipality and that any duplication of services is not deemed unreasonable by the Public Service Commission.

Traditionally, an electricity customer must purchase all its electric services from the utility serving that customer's service territory, including the three primary services--generation, transmission, and distribution. Generation refers to the actual creation of electricity. Transmission refers to the delivery of electricity over distances at high voltage from a generation facility through a transmission network usually to one or more distribution substations, where the electricity is stepped down for distribution to residential, commercial, and industrial customers. For the retail customer, the costs for these functions are bundled into retail rates, along with the cost of distribution. Distribution involves the retail sale of electricity directly to consumers.

Other functions traditionally provided by vertically integrated utilities include customer service, billing, meter reading, demand-side management, research and development, and aggregation and ancillary services. Aggregation is the development and management of both a power portfolio, combining power from a variety of sources in order to match the demand for power with adequate power supply and a portfolio of customers with combined demands in order to economically serve those customers. Ancillary services are those services necessary to effect a transfer of electricity between a seller and a buyer and to coordinate generation, transmission, and distribution functions to maintain power quality and system stability.

Under the current industry structure, the utility serving a service territory provides all these services and functions, selling them as a single bundle. Nationwide, the restructuring debate centers on whether or how the generation function should be separated from the bundle, allowing retail customers to choose their electricity supplier. If generation is unbundled from transmission and distribution, under this scenario, these services may remain regulated functions.

The Regulatory Compact

The provision of electric service has been considered to exhibit the characteristics of a natural monopoly. According to economic theory, a natural monopoly exists in a market if one service provider in the market can serve customers more efficiently than many competing service providers. A common explanation for electricity provision as a natural monopoly is that allowing competitors to string duplicate transmission and distribution lines and construct excess generation capacity would waste resources and increase electric rates for customers. Generally, the characteristics of a natural monopoly include a high, upfront capital investment in technology; limited storability of a provided service or goods; limited transportability, requiring operations near the end users; and cost advantages of large and integrated systems as a result of better utilization of existing capacity or economies of scale and scope.

In markets exhibiting the characteristics of a natural monopoly, government intervention in the form of regulation over a single firm is considered necessary to provide the market discipline competition cannot provide. In exchange for this monopoly, each utility is required to serve all customers within its service territory and to provide quality service at just and reasonable rates. The utility is permitted to recover reasonable and prudent expenses associated with its provision of service plus a reasonable rate of return on its investment made to serve customers. This exchange is known as the regulatory compact.

Under the regulatory compact, the traditional method of rate determination has been rate of return regulation. This type of regulation is designed to ensure that utilities offer their services at prices that are based on the cost of the services rather than on the value customers place on those services. In traditional rate of return regulation, the regulating entity determines the revenue requirement (the reasonable and prudent cost of providing utility service), allocates the requirement among customer classes, and translates the allocated revenue requirement into rates. Traditional rate of return regulation has been criticized for allowing a utility and its shareholders to pass on all the utility's costs and risks to ratepayers, and because the utility faces minimal risks, the utility has little or no incentive to increase its operating efficiency or to minimize its expenses.

As an alternative to traditional rate of return regulation, some commentators have advocated and some states have implemented various forms of incentive regulation, including flexible regulation, targeted incentive plans, external performance indexing, price and revenue caps, and performance-based regulation. However, these forms of incentive-based regulation also have their critics. Performance-based regulation opponents have argued that this type of regulation may result in the selection of inappropriate performance benchmarks; incorporation of too many, or contradictory, societal or regulatory goals into the performance-based regulation plan; unreasonable returns to shareholders; or exacerbation of the information asymmetry between utilities and regulators.

Federal Actions to Promote Competition

In 1978 Congress enacted the Public Utility Regulatory Policy Act. The goals of this Act were to make the United States self-sufficient in energy, increase energy efficiency, and encourage the use of renewable alternative fuels. The Act intended to achieve these goals by abandoning the use of natural gas to make electricity, mandating conservation of oil, and encouraging industry to cogenerate electricity using waste heat. The Act required utilities to purchase bulk power produced from cogeneration facilities to ensure that it was financially attractive. States were allowed, however, to determine the avoided costs (the amount of money an electric utility would need to spend for the next increment of electric generation that it instead buys from a cogenerator) and quantity of such power. Some states capped the price at the utility's avoided costs and limited the obligation to purchase to the capacity of the utility. Other states allowed prices above the utility's avoided costs and ordered purchases of additional generation whether needed or not.

In 1992 Congress enacted the Energy Policy Act to encourage the development of a competitive, national, wholesale electricity market with open access to transmission facilities owned by utilities to both new wholesale buyers and new generators of power. In addition, the Act reduced the regulatory requirements for new nonutility generators and independent power producers. The Federal Energy Regulatory Commission initiated rulemaking to encourage competition for generation at the wholesale level by assuring that bulk power could be transmitted on existing lines at cost-based prices. Under this legislation and rulemaking, generators of electricity, whether utilities or private producers, could market power from underutilized facilities across state lines to other utilities.

The Federal Energy Regulatory Commission has taken a number of steps to encourage competition in the wholesale market. These actions include authorizing market-based rates, issuing Section 211 wheeling orders, ordering open access transmission tariffs, and

issuing the open access transmission rule (Order No. 888). Market-based rates are those set by willing buyers and sellers of power. This method may be used instead of the more traditional method of ratesetting by regulators pursuant to administrative hearings, with rates based on the cost of producing power. On April 24, 1996, the Federal Energy Regulatory Commission issued Order Nos. 888 and 889, which essentially require all utilities that own, control, or operate transmission lines to file nondiscriminatory open access transmission tariffs that offer competitors transmission service comparable to the service that the utility provides. In addition, Order No. 888 recognizes the right of utilities to recover legitimate, prudent, and verifiable costs stranded by opening up the wholesale electricity market, i.e., stranded costs, and requires public utilities to functionally unbundle their power and services for wholesale power transactions by requiring the internal separation of transmission from generation marketing services.

Electric Industry Restructuring Initiatives in Other States

Twenty-one states have enacted electric industry restructuring legislation. These states include Arkansas, California, Connecticut, Delaware, Illinois, Massachusetts, Maryland, Maine, Montana, New Hampshire, New Jersey, New Mexico, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, and West Virginia. Four of these states--California, Massachusetts, Pennsylvania, and Rhode Island--have passed the date on which competition is to be phased in. Each of the four states that has passed the date on which competition is to be phased in are in a transition period during which most customers continue to pay a regulated electricity rate. Competition for Illinois industrial customers will begin later this year. Four state public utilities commissions--Arizona, Michigan, New York, and Vermont--have issued comprehensive restructuring orders. Twenty-one states and the District of Columbia have active legislative or regulatory processes underway to study restructuring and propose implementing legislation. Five states have undertaken little preliminary activity to date.

Competition has taken hold more quickly among industrial and commercial customers than among residential customers in California. Almost all residential customers continue to pay a regulated rate for power, albeit one that was reduced by 10 percent through a provision in California's restructuring legislation. As of early 1999, .9 percent of residential customers had switched providers, 7.1 percent of commercial customers had switched providers, and 18.1 percent of industrial customers had switched providers.

In Pennsylvania, approximately 400,000 customers have switched providers, which represents a larger proportion of total customers than switched providers in California. In Rhode Island and Massachusetts, few

customers have yet switched providers. In large part, this small number reflects the rules set out in the transition.

The National Conference of State Legislatures notes that many utilities are selling their power plants. Only one state, Maine, has required the sale of all utilities' power plants, while some states have created incentives for utilities to sell their plants. With a few exceptions, these plants have sold for about double their book value, which is a far higher sales price than had been expected. Utilities have also been merging at speeds unprecedented for the industry as they attempt to cut costs and extend their markets.

Utilities generally have been allowed to recover their stranded costs subject to certain restrictions. In general, the magnitude of these stranded costs has been smaller than the original estimates. The higher-than-expected prices that power plants fetched on the open market serve to reduce the total amount of utilities' stranded costs.

The National Conference of State Legislatures notes that green power markets are surprisingly strong. Green power refers to an electricity product distinguished by a contract tied to production of energy generated from wind, biomass, geothermal, solar, or possibly hydro facilities. More than one-half of the customers in California have chosen a green power product and close to one-third of Pennsylvania's customers have chosen a green power product.

Most states that have enacted restructuring legislation include requirements that power marketers disclose the price, terms, fuel source, and emissions characteristics of the power sold to customers. Although states use a variety of approaches to this effort, it appears it is technically feasible to track the emissions characteristics of the power generated through the flow of contract dollars.

Almost every state that has passed comprehensive restructuring legislation has had to return the following year for revisions to the policy. In 1999 Nevada revised the dates for phasing in competition. Illinois and Maine addressed environmental and renewable energy provisions, and Montana put in place an energy tax reform package necessitated by a competitive electric industry. Montana also enacted provisions to give smaller customers a means to participate in the competitive electricity market through a statewide cooperative.

Electric Utility Taxation in Other States

States that have enacted comprehensive electric utility taxation bills include Iowa and Montana.

Iowa

Iowa Code Chapter 437A generally replaces the current central property tax assessment procedures utilized by the Iowa Director of Revenue and Finance in valuing property of entities involved primarily in the production, delivery, and transmission of electricity and

natural gas, with excise taxes on electricity and natural gas, and a statewide property tax on certain property of these entities. The Act generally took effect January 1, 1999, and is applicable to property tax assessment years beginning on or after January 1, 1999, and to replacement tax years beginning on or after January 1, 1999.

Chapter 437A imposes a replacement tax on the delivery of electricity to a consumer in Iowa. The replacement delivery tax is an amount equal to the number of kilowatt-hours delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric replacement delivery tax rate for each competitive service area plus, if applicable, the number of kilowatt-hours delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric transfer replacement tax rate for each electric competitive service area. The tax rate is calculated by the Iowa Director of Revenue and Finance. Municipal electric transfer replacement tax rates are to be calculated annually by the city council of each city located within an electric competitive service area served by a municipal utility as of January 1, 1998.

Chapter 437A imposes a replacement tax on the delivery of natural gas to a consumer within Iowa. The replacement delivery tax is an amount equal to the number of therms delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the natural gas delivery tax rate for each competitive service area plus, if applicable, the number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the municipal natural gas transfer replacement tax rate for each natural gas competitive service area. The tax rate is calculated by the Iowa Director of Revenue and Finance. Municipal natural gas transfer replacement tax rates are to be calculated annually by the city council of each city located within a natural gas competitive service area served by a municipal utility as of January 1, 1998.

Chapter 437A provides for the allocation of all replacement tax revenue by the Iowa Director of Revenue and Finance. All replacement taxes owed by a taxpayer are to be allocated among the local taxing districts in which the taxpayer's property is located in accordance with a general allocation formula determined by the Iowa Department of Management on the basis of general property tax equivalents.

Chapter 437A imposes an annual statewide property tax of three cents per \$1,000 of assessed value on all property that is primarily and directly used in the production, generation, transmission, or delivery of electricity or natural gas owned or leased to a person subject to taxation under the chapter.

Montana

The Montana Electrical Generation Tax Reform Act, enacted in 1999, generally revised taxation of electric utilities in Montana. The Act became effective January 1, 2000. All investor-owned electric utility generation facilities were transferred from Class 9, 12 percent, to a new Class 13 and taxed at six percent of their market value on January 1, 2000, except for electrical generation facilities used for noncommercial purposes, exclusively for agricultural purposes, or qualifying as small power production facilities. The assessed value for the electrical facility's property remaining in Class 9 is not greater in fiscal year 2000 or fiscal year 2001 than the assessed value in 1998. The wholesale energy transaction tax applies to kilowatts per hour of electricity produced or consumed in Montana. The tax is applied to electrical transmission at the rate of 0.015 cents per kilowatt-hour.

Exemptions to the wholesale energy transaction tax include electricity that is transmitted through the state that is neither produced nor consumed in the state; electricity generated in the state by an agency of the federal government for delivery outside the state; electricity delivered to a distribution services provider that is a municipal utility or a rural electric cooperative; electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997; electricity meeting certain contractual requirements that is delivered by a distribution services provider that was first served by a public utility after December 31, 1996; and electricity that has been subject to the transmission tax in another state. The tax is deposited in the state general fund.

Reimbursements are distributed on a semiannual basis to the county treasurer in the counties affected by a reduction in electric generation of property taxes. Distributions are based on each jurisdiction's change in assessed value of electric generation facilities and its previous year's mill levy.

Federal Restructuring Initiatives

Nine bills relating to electric industry restructuring were introduced during the 105th Congress. However, none became law. At least 14 bills relating to electric industry restructuring have been introduced in the 106th Congress; however, some deal with taxation and other issues and only relate tangentially to electric industry restructuring.

S.282 - This bill, the Transition to Competition in the Electric Industry Act, provides that no electric utility may be required, under the Public Utility Regulatory Policy Act of 1978, to enter a new contract or obligation to purchase or sell electricity or capacity from or to

qualifying cogeneration and small power production facilities. The bill requires the Federal Energy Regulatory Commission to adopt regulations to ensure that no electric utility may be required to absorb the costs associated with purchases of electric power or capacity from a qualifying facility pursuant to the Public Utility Regulatory Policy Act obligations before enactment of the bill.

S.313 - This bill, the Public Utility Holding Company Act of 1999, would repeal the Public Utility Holding Company Act of 1935. The bill prescribes procedural guidelines for both the Federal Energy Regulatory Commission and state access to records of a holding company, including subsidiaries, associates, and affiliates, of a public utility or natural gas company. The bill subjects production of records to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of trade secrets or sensitive commercial information. The bill requires the Federal Energy Regulatory Commission to exempt any person or transaction from these access requirements if it finds the regulation of that person or transaction is irrelevant to the jurisdictional rates of a public utility or natural gas company.

S.386 and H.R.721 - These bills, each known as the Bond Fairness and Protection Act of 1999, amend the Internal Revenue Code with respect to tax-exempt bond financing of certain electric facilities to exclude a permitted open access transaction from the definition of private business use. The bills permit termination of tax-exempt bond financing for certain electric output facilities.

S.516 - This bill, the Electric Utility Restructuring Empowerment and Competitiveness Act of 1999, amends the Federal Power Act to prescribe parameters within which a state may exercise jurisdiction over retail electric supplier distribution service provided to retail customers within its borders; establish and enforce electric energy performance standards; exercise authority over retail transactions, including the imposition of surcharges; and require electric energy suppliers to provide wholesale and retail reciprocity with respect to open, nondiscriminatory transmission access and local distribution access.

S.1047 - This bill, the Comprehensive Electricity Competition Act, provides that not later than January 1, 2003, any distribution utility that has the capability to deliver electric energy to an electric consumer over its facilities must offer open access to those facilities for the sale of electric energy to the consumer and must do so at rates, terms, and conditions that are not unduly discriminatory or preferential, as determined by the appropriate regulatory authority. State regulatory authorities and nonregulated distribution utilities may opt out of retail competition if the state regulatory authority finds that implementation of the retail competition requirement by a distribution utility will have a negative impact on a class of customers of that utility that cannot

be mitigated, and a nonregulated distribution utility may determine not to implement the retail competition requirement if it finds, after notice and opportunity for hearing, that implementation of the retail competition requirement by the distribution utility will have a negative impact on a class of customers of that utility that cannot be mitigated.

S.1048 - This bill contains the tax provisions that accompany the Comprehensive Electricity Competition Act.

H.R.667 - This bill, the Power Bill, amends the Federal Power Act to declare that its prohibition against mandatory retail wheeling and sham wholesale transactions does not affect any state or local government authority under state law with respect to electric energy sale or transmission directly to an ultimate consumer. The bill prescribes guidelines for state-imposed reciprocity governing access to electric utility transmission distribution facilities. The bill grants cooperatively owned sellers or distributors of electricity the right to engage in any activity or provide any service lawfully carried out by any other seller or distributor of electricity in that state. The bill authorizes a state or state regulatory authority to impose charges upon purchases of retail electric energy services, including fees to recover costs incurred by an electric utility that become unrecoverable due to the availability of retail electric service choice, and to pay all reasonable costs associated with government requirements regarding decommissioning of nuclear generating units. The bill declares that, as of the date of enactment, new electric utility contracts for purchase or sale are not subject to specified requirements encouraging cogeneration and small power production. The bill also repeals the Public Utility Holding Company Act of 1935 and also prescribes guidelines for federal and state access to books and records of electric utility holding companies and their affiliates. The bill requires state laws or regulations for the recovery of stranded costs to be filed with the Federal Energy Regulatory Commission as a prerequisite to state receipt of federal energy assistance. The bill precludes any modification or repeal of these laws or regulations for seven years after their filing date and directs the Federal Energy Regulatory Commission to make these laws or regulations available to the public.

H.R.971 - This bill, the Electric Power Consumer Rate Relief Act of 1999, amends the Public Utility Regulatory Policy Act of 1978 to provide that a state regulatory authority may ensure that rates charged by qualifying small power producers and qualifying cogenerators to purchasing electric utilities are just and reasonable to consumers of the purchasing utility and in the public interest and do not exceed the incremental cost at the time of delivery to the utility of alternative electric energy and capacity.

H.R.1138 - This bill, the Ratepayer Protection Act, declares that no electric utility may be required to enter a new contract or obligation to purchase or sell electric

energy or capacity pursuant to the provisions of the Public Utility Regulatory Policy Act of 1978 governing cogeneration and small power production. The bill directs the Federal Energy Regulatory Commission to adopt regulations to ensure that no utility may be required to absorb the costs associated with electric energy or capacity purchases from a qualifying facility executed before the Act's enactment date.

H.R.1486 - This bill, the Power Marketing Administration Reform Act of 1999, requires the Secretary of Energy to implement procedures to ensure that the federal power marketing administrations utilize the same accounting principles and requirements as the Federal Energy Regulatory Commission applies to the electric operations of public utilities.

H.R.1587 - This bill, the Electric Energy Empowerment Act of 1999, amends the Federal Power Act to empower the states to order electric utilities within their jurisdictions to provide nondiscriminatory open access through functionally unbundled transmission and local distribution services to retail customers within their borders (retail wheeling).

H.R.2645 - This bill, the Electricity Consumer, Worker, and Environmental Protection Act of 1999, implements federal and state standards for electricity service designed to protect workers in the electricity industry.

H.R.2734 - This bill, the Community Choice for Electricity Act of 1999, allows a group of customers or entities to acquire retail electric energy on an aggregate basis if the group is served by one or more local distribution companies that are subject to retail competition.

Testimony and Committee Activities

The committee determined that before it could recommend a comprehensive restructuring or deregulation proposal, it would need to address the taxation of the electric utility industry in North Dakota. The committee solicited and received proposals from the Association of Rural Electric Cooperatives and the state's investor-owned utilities and also developed its own proposals. All the proposals separated the generation function, transmission function, and distribution function for taxation purposes.

The initial proposal submitted by the Association of Rural Electric Cooperatives left in place the current coal conversion and coal severance taxes. The coal conversion tax is a privilege tax imposed on the operator of a coal conversion facility, which is defined to include any coal-fired electric generating unit with a capacity of 120 megawatts or more. It is a tax in lieu of a property tax on the plant itself but not on the land, which remains subject to a property tax. The tax is one-quarter mill times 60 percent of installed capacity times the number of hours in the taxable period and one-quarter mill per kilowatt-hour of electricity produced for sale. The coal severance tax is a tax on the removal of coal from the ground. The tax is applied at a rate of 75 cents per ton,

with an additional two cents per ton for the lignite research fund.

The initial proposal taxed all transmission facilities on a line mile basis. Transmission lines under 75 kilovolts would be taxed at a rate of \$100 per mile; transmission lines from 75 to 149 kilovolts would be taxed at a rate of \$200 per mile; transmission lines from 150 to 224 kilovolts would be taxed at a rate of \$300 per mile; transmission lines from 225 to 299 kilovolts would be taxed at a rate of \$400 per mile; and transmission lines of 300 kilovolts or more would be taxed at a rate of \$500 per mile.

Concerning the distribution function, utilities would be charged a tax on the distribution of electricity using a two-part formula. A flat tax of 62 cents per megawatt-hour of delivered power and a tax of one percent of revenue collected on the retail sale of kilowatt-hours of electricity. This taxation proposal would replace gross receipts and transmission line taxes paid by rural electric cooperatives and property taxes paid by investor-owned utilities.

Proponents of the proposal testified that the proposal would create an equitable electric utility tax structure and prepare the state and its political subdivisions for any changes in the electric utility industry or corporate structures that might occur in the future. Proponents testified that the proposal was designed to be revenue neutral with respect to the total taxes currently paid to political subdivisions by the electric utility industry in North Dakota. Current generation taxes generate approximately \$12 million annually, and transmission and distribution taxes generate approximately \$11.6 million per year. Although the proposal was not intended to be revenue neutral with respect to the taxes paid by individual utilities, and under the proposal some utilities would pay more than previously and some would pay less, proponents testified that all are treated fairly and uniformly with respect to property taxation within each utility function.

Proponents testified that generation taxes would be imposed separately from taxes on transmission and distribution. To a large extent, this is already the case as the coal conversion tax serves as an in lieu of property tax on all coal-fired generation facilities of 120 megawatts or more. At 86 megawatts, the Heskett Plant owned by Montana-Dakota Utilities Company is not subject to the coal conversion tax. Instead, the value of this facility is currently included as part of Montana-Dakota Utilities Company's centrally assessed property. Other electric generation in the state is standby, peaking, or self-generation that is subject to local property taxation but would not be assessed on a system-wide basis as is presently the case for the investor-owned utilities.

Concerning the transmission function, transmission facilities currently are taxed in three ways. First, investor-owned utility transmission lines are centrally assessed as part of each utility's systemwide property

tax assessment. Second, rural electric cooperative generation and transmission companies pay gross receipts taxes. Third, rural electric cooperative generation and transmission companies pay a tax of \$225 per mile on all transmission lines of 230 kilovolts or higher. Under the Association of Rural Electric Cooperatives' initial proposal, taxes on the transmission function would generate approximately \$1,975,000. In addition, utilities would continue to pay a locally assessed property tax on land owned by them for their substations.

Concerning the distribution function, to maintain overall revenue neutrality to the political subdivisions in the Association of Rural Electric Cooperatives' initial proposal, the distribution tax would have to generate approximately \$9.6 million per year. Investor-owned utility distribution facilities are centrally assessed on a systemwide basis while rural electric cooperatives pay a combination of taxes, including a gross receipts tax, a land tax, and an optional city privilege tax. Under the Association of Rural Electric Cooperatives' initial proposal, all these taxes, except for a locally assessed land tax that would be paid by all utilities, would be replaced with a distribution tax consisting of two components, each of which would generate approximately \$4.8 million in revenue annually. The first component was a flat tax of \$.00062 per kilowatt per hour or \$.62 per megawatt-hour sold at retail. The second component was a one percent tax on revenue from the retail sale of electricity or electric-operating revenue.

Proponents testified that the two-component distribution tax would balance opposing views on how distribution taxes should be allocated among consumer classes. One view holds that each kilowatt-hour should be taxed the same for use of the distribution system. The other view holds that high-volume or offpeak energy users who receive volume discounts or price concessions to encourage usage should pay a lesser proportionate share of distribution taxes. Proponents testified that relying exclusively on a flat tax per kilowatt-hour generally benefits utilities that sell smaller amounts of energy at higher prices, whereas imposition of a tax based on a percentage of retail sales benefits utilities that sell a high volume of energy at lower prices. Because there can be substantially different tax consequences by moving exclusively to one tax or the other, proponents testified that the proposal adopted both approaches as a compromise solution pending further study and additional information regarding how the industry might change in the future.

Concerning revenue distribution, the initial proposal did not specifically address the long-term distribution or redistribution of revenue among political subdivisions but guaranteed a minimum level of revenue for each county based upon previous tax collections in the base years 1995 through 1997. The proposed taxes would be applicable to all utilities and other entities owning generation, transmission, or distribution facilities in the state,

including municipal utilities. The property taxes would be embedded in the rates charged by utilities for wheeling power over transmission or distribution lines, so they would be a nonbypassable tariff on power marketers.

Concerning the impact of this electric utility taxation proposal, proponents testified that the proposal affected utilities differently depending upon their current tax burdens, their ownership of transmission facilities, and the volume and price of their electric energy sales. The committee received testimony that overall the plan would impose additional taxes of about \$88,000 on distribution cooperatives and would cost Basin Electric Power Cooperative and Great River Energy and Central Power Cooperative more than \$100,000 each. Xcel Energy, Inc., would pay more than \$500,000 in additional taxes, and Montana-Dakota Utilities Company would pay over \$400,000 more. Otter Tail Power Company would pay slightly less tax than it currently pays. Under this initial proposal, Central Power and Upper Missouri Generation and Transmission, both of which are intermediate transmission cooperatives, would realize substantial savings. This is due to the elimination of the "pancaking" effect of the two percent gross receipts tax. Under current law, when a transmission cooperative sells power to its distribution members, it must pay a two percent gross receipts tax on the revenue it receives from these sales. When the distribution cooperative resells the same electric energy, the distribution cooperative also pays a two percent gross receipts tax on selected sales.

Opponents testified that the Association of Rural Electric Cooperatives' initial proposal did not address the approximately \$2.5 million paid in state income taxes by the state's investor-owned utilities. Opponents testified that the percentage of retail sales tax component of the proposal added complexity to the taxation scheme, shifted costs among consumers, and could produce negative results in terms of revenue erosion in a restructured market. Opponents testified that they favored a megawatt per hour tax. Concerning taxation of the transmission component, opponents testified that the transmission proposal did not tax these assets at an appropriate level. They testified that the initial proposal shifted a disproportionate proportion of the tax to the distribution component in favor of the transmission component, and they indicated that a better balance is possible. Finally, opponents testified that the initial proposal did not address current and future power marketers.

The state's investor-owned utilities submitted an electric utility industry taxation proposal that taxed the generation component, transmission component, and distribution component by function. Concerning the generation component, the proposal taxed all generation plants in the state based on the current coal conversion formula. This would include Montana-Dakota Utilities Company's Heskett Plant and various small peaking plants. Proponents indicated that taxing all generation

plants would allow all current and future power plants to compete with one another without regard to taxes and tax policy.

Concerning the transmission component, the proposal taxed all transmission facilities on a line mile basis. Transmission lines of 41.6 kilovolts would be taxed at a rate of \$200 per mile; transmission lines of 57 kilovolts would be taxed at a rate of \$300 per mile; transmission lines of 69 kilovolts would be taxed at a rate of \$500 per mile; transmission lines of 115 kilovolts would be taxed at a rate of \$600 per mile; transmission lines of 230 kilovolts would be taxed at a rate of \$800 per mile; transmission lines of 345 kilovolts would be taxed at a rate of \$1,000 per mile; and transmission lines of 400 kilovolts would be taxed at a rate of \$1,200 per mile.

Concerning the distribution component, utilities would be charged a distribution tax of \$1.5255 per megawatt-hour for residential and other classes of customers and \$.9153 per megawatt-hour for commercial and industrial customers. This component also included a power marketer tax of \$.4416 per megawatt-hour. The proposal replaced gross receipts and transmission line taxes paid by rural electric cooperatives, property taxes paid by investor-owned utilities, and state income taxes paid by investor-owned utilities. Proponents testified that the entire distribution component should be based on a rate per megawatt-hour. They indicated it would be included in the ratemaking process as an embedded cost and thus would preclude tax-exempt organizations and out-of-state power marketers that sell to in-state customers from bypassing the tax. The rate per megawatt-hour would be designed for classes of customers based on cost of service. To minimize customer class subsidization, the rate for the residential and other class would be higher than the rate for the commercial and industrial class. The commercial and industrial class rate would be 60 percent of the residential class rate. Proponents testified that a different rate for different classes of customers is appropriate and consistent with current class cost-of-service studies on file with the Public Service Commission. Representatives of the state's investor-owned utilities testified that their proposal would provide the required stable revenue stream to the state, would allow for the benefits of a competitive electric market to not be influenced by taxation rates and policy, would be relatively simple and easy to administer, would pass nexus requirements and interstate commerce concerns, would allow for state revenue growth, and would meet the needs of the state and all the electric consumers in the state.

Opponents of the proposal submitted by the state's investor-owned utilities testified that adoption of the transmission component would be devastating for the state's rural electric cooperatives, and a percentage of revenue tax may lead to revenue increases if electric utility rates increase in a deregulated market.

The Association of Rural Electric Cooperatives submitted a revised electric utility industry taxation proposal. This proposal also retained the state's coal conversion and coal severance taxes but extended the coal conversion tax to all generation facilities of five megawatts or greater regardless of fuel source. This proposal taxed all transmission facilities on a line mile basis. Transmission lines under 50 kilovolts would be taxed at a rate of \$75 per mile; transmission lines from 50 to 99 kilovolts would be taxed at a rate of \$150 per mile; transmission lines from 100 to 199 kilovolts would be taxed at a rate of \$300 per mile; transmission lines from 200 to 299 kilovolts would be taxed at a rate of \$450 per mile; transmission lines from 300 to 399 kilovolts would be taxed at a rate of \$600 per mile; and transmission lines of 400 kilovolts or more would be taxed at a rate of \$900 per mile. Concerning the distribution component, utilities would be charged a tax on the distribution of electricity using a two-part formula--a flat tax of 59 cents per megawatt-hour of delivered power and a tax of .95 percent of revenue collected on the retail sale of kilowatt-hours of electricity. The association's revised proposal increased transmission taxes \$400,000 or 20 percent over its initial proposal and reduced the distribution tax component accordingly.

Opponents of this revised proposal testified that a distribution formula that does not separate residential from commercial and industrial users would increase the cost of electricity significantly for commercial and industrial users which would harm economic development in the state. Proponents countered that the revised proposal accounted for both the low-cost and high-cost energy and the high-volume and the low-volume energy user and would have a minimal impact on individual energy users and not harm economic development in the state.

In addition to the transmission taxation proposals contained in the two proposals submitted by the Association of Rural Electric Cooperatives and the proposal submitted by the state's investor-owned utilities, the committee developed two transmission tax alternatives. Under the committee's initial proposal, transmission lines under 50 kilovolts would be taxed at a rate of \$125 per mile; transmission lines from 50 to 99 kilovolts would be taxed at a rate of \$300 per mile; transmission lines from 100 to 199 kilovolts would be taxed at a rate of \$500 per mile; transmission lines from 200 to 299 kilovolts would be taxed at a rate of \$700 per mile; transmission lines from 300 to 399 kilovolts would be taxed at a rate of \$900 per mile; and transmission lines of 400 kilovolts or more would be taxed at a rate of \$1,200 per mile.

Under current law, lines of 230 kilovolts or larger are taxed at a rate of \$225 per mile. There are 1,824.8 miles of transmission lines in this category which generate \$410,580 annually. The transmission component of the Association of Rural Electric Cooperatives' initial

proposal would raise \$1,968,538, the transmission component of the Association of Rural Electric Cooperatives' revised proposal would raise \$2,388,362.20, the transmission component of the state's investor-owned utilities' proposal would raise \$4,943,192, and the committee's initial proposal would raise \$3,884,387.70. Under the second transmission taxation formula developed by the committee, transmission lines of 41.6 kilovolts would be taxed at a rate of \$200 per mile, transmission lines of 57 kilovolts would be taxed at a rate of \$300 per mile, transmission lines of 69 kilovolts would be taxed at a rate of \$400 per mile, transmission lines of 115 kilovolts would be taxed at a rate of \$600 per mile, transmission lines of 230 kilovolts would be taxed at a rate of \$800 per mile, transmission lines of 345 kilovolts would be taxed at a rate of \$1,000 per mile, and transmission lines of 400 kilovolts would be taxed at a rate of \$1,500 per mile. This proposal also included a tax of \$1,300 per mile on transmission lines of 500 kilovolts, a tax of \$1,200 per mile on 250 kilovolt direct current lines, and a tax of \$1,500 per mile on 400 direct current lines.

Representatives of the state's investor-owned utilities testified that both of the Association of Rural Electric Cooperative proposals would have a negative impact on their customers. They testified that the initial Association of Rural Electric Cooperative proposal would shift approximately \$1 million from the generation and transmission cooperatives to the investor-owned utilities and that the distribution tax component could lead to state revenue erosion. Under the revised proposal, representatives of the state's investor-owned utilities testified that \$700,000 would be shifted to the state's investor-owned utilities. Also, they testified, neither proposal addressed the state income taxes paid by the investor-owned utilities.

Concerning the investor-owned utilities' proposal, representatives of the Association of Rural Electric Cooperatives testified that the investor-owned utility proposal would increase the amount of revenue generated by transmission and distribution taxes by an additional \$2.5 million in order to offset a 100 percent income tax credit for the investor-owned utilities. They testified that this would have the effect of making rural electric cooperative customers share the burden of the investor-owned utilities' state income tax liability without receiving the benefits of the investor-owned utility profits that are largely realized by out-of-state shareholder-investors. Representatives of the Association of Rural Electric Cooperatives testified that the investor-owned utility proposal would place a disproportionate share of the tax burden on the transmission system in comparison to the distribution system. They testified that this feature of the investor-owned utility proposal is designed to place a greater burden on the rural electric cooperatives because they own more transmission in the state, especially high-voltage transmission, than do the

investor-owned utilities. Representatives of the Association of Rural Electric Cooperatives also testified that the distribution component of the investor-owned utility proposal favored a low tax rate on all electrical sales to commercial and industrial customers and a high rate for residential customers, even those who use low-cost, offpeak electricity for home heating. They noted that the rural electric cooperatives serve, on average, a smaller percentage of commercial and industrial customers and a higher percentage of residential accounts than do the state's investor-owned utilities, and the investor-owned utility tax proposal's rates were calculated to shift more of the distribution tax burden to the rural electric cooperatives.

The committee also received information from the State Tax Department on the dollar amounts of property taxes, gross receipts, and transmission line taxes levied against electric companies in North Dakota for the years 1995 through 1999. The amount of tax levied was \$11,694,190.68 in 1995, \$11,947,394.07 in 1996, \$12,658,617.81 in 1997, \$12,590,293.23 in 1998, and \$12,141,287.23 in 1999. The five-year average is \$12,206,356.60.

Committee Considerations

The committee considered a bill draft relating to taxation of the distribution and transmission of electric power for retail sale in North Dakota. The bill draft would have applied the state's coal conversion tax to Montana-Dakota Utilities Company's Heskett Plant in Mandan; removed investor-owned utility property from central assessment under NDCC Chapter 57-06; removed the gross receipts tax for rural electric cooperatives; imposed transmission and distribution line taxes in lieu of property taxes except that property taxes would still be imposed on land, office or administrative-type buildings, and buildings and structures not used primarily and directly in the delivery of electricity through transmission and distribution lines; subjected peaking plants of less than 80 megawatts to local property tax assessment or exempted them as property used primarily in the delivery of electricity through lines; increased the transmission line tax; imposed a distribution tax; excluded municipal electric utilities from coverage under the bill draft; and allocated transmission and distribution tax revenue with a continuing appropriation to political subdivisions.

The bill draft would have imposed an annual transmission line mile tax on transmission lines based on their nominal operating voltages on April 1 of each year. A tax of \$200 would have been imposed on transmission lines that operate at a nominal operating alternating current voltage of less than 57 kilovolts; a tax of \$300 would have been imposed on transmission lines that operate at a nominal operating alternating current voltage of 57 kilovolts or more, but less than 69 kilovolts; a tax of \$400 would have been imposed on transmission lines that operate at a nominal operating alternating

current voltage of 69 kilovolts or more, but less than 115 kilovolts; a tax of \$600 would have been imposed on transmission lines that operate at a nominal operating alternating current voltage of 115 kilovolts or more, but less than 230 kilovolts; a tax of \$800 would have been imposed on transmission lines that operate at a nominal operating alternating current voltage of 230 kilovolts or more, but less than 345 kilovolts; a tax of \$1,000 would have been imposed on transmission lines that operate at a nominal operating alternating current voltage of 345 kilovolts or more, but less than 500 kilovolts; a tax of \$1,200 would have been imposed on transmission lines that operate at a nominal operating direct current voltage of less than 400 kilovolts; a tax of \$1,300 would be imposed on transmission lines that operate at a nominal operating alternating current voltage of 500 kilovolts or more; and a tax of \$1,500 would have been imposed on transmission lines that operate at a nominal operating direct current voltage of 400 kilovolts or more.

Concerning distribution taxes, distribution companies would have been subject to a distribution tax of 75.83 cents per megawatt-hour for the retail sale of electricity to commercial or industrial consumers and a rate of \$1.2638 per megawatt-hour for the retail sale of electricity to noncommercial or nonindustrial consumers. The bill draft included a continuing appropriation for allocation of electric transmission and distribution tax revenue to counties thus obviating the need for counties to approach the Legislative Assembly each session to appropriate the revenue from the electric transmission and distribution taxes to these political subdivisions. Revenue from the tax on transmission lines would have been allocated among counties based on the mileage of transmission lines and the rates of tax on those lines within each county. Revenue received by a county would have been allocated among taxing districts in the county based on the mileage of transmission lines and the rates of tax on those lines within each taxing district. Revenue from that portion of a transmission line located in more than one taxing district would have been allocated among those taxing districts in proportion to their respective current property tax mill rates that apply to the land on which the transmission line is located. Revenue from the distribution company tax would have been allocated to the county in which the retail sale to which the tax applied was made and allocated among taxing districts in the county in proportion to their respective property tax levies in dollars on property within the county in the previous taxable year. Cities that operate municipal electric utilities would have been excluded from allocations and computations under this provision.

The committee received testimony from representatives of the office of the State Tax Commissioner that the proposal should define "commercial or industrial customer" and would generate \$12,220,462 versus the total of taxes levied on electric property under existing law, \$12,575,382. The committee received testimony from representatives of the state's investor-owned

utilities that the distribution tax component would generate \$546,000 more in annual revenue than existing taxes, and the distribution tax rate should be set at \$.6202 per megawatt-hour for commercial and industrial customers and \$1.0337 per megawatt-hour for residential and other customers. Under the proposed distribution tax formula, they testified, rural electric cooperatives would average \$1.1188 per megawatt-hour and generation and transmission cooperatives would average \$.1104 per megawatt-hour for a total between these two of \$1.2292. They testified that the average for investor-owned utilities would be \$1.3887 per megawatt-hour, and the proposal did not include the \$2.5 million in state income taxes paid by the state's investor-owned utilities which adds another \$.06 per megawatt-hour to the bills of consumers served by investor-owned utilities. Also, they testified, the transmission line mile tax is too high and may discourage construction of a new coal-fired generating plant in North Dakota. Also, representatives of the state's investor-owned utilities testified that any tax restructuring legislation should be part of a comprehensive electric restructuring bill and should not be enacted before implementation of restructuring.

The committee received testimony from representatives of the state's rural electric cooperatives that the total amount of transmission taxes under the bill draft would exceed \$4.9 million and would impact some transmission owners disproportionately. Representatives of the Association of Rural Electric Cooperatives testified that their revised proposal would result in less tax shifting among utilities than would occur under the bill draft. The maximum transmission and distribution tax increase for an investor-owned utility under the Association of Rural Electric Cooperatives' plan is approximately 25 percent, and overall investor-owned utility transmission and distribution taxes would increase approximately 13 percent. By contrast, Great River Energy's transmission taxes would increase by more than 400 percent, and Minnkota Electric Cooperative's transmission taxes would nearly double under the bill draft. They testified that their proposal does not rely on an arbitrary distinction between commercial and industrial sales and residential and other sales. Fifty percent of their distribution tax formula is based on a percentage of gross revenue which means there is less tax on high-volume, low-cost electric sales to commercial and industrial accounts, and the same tax benefit is provided to other low-cost users such as those who take advantage of offpeak electric heating programs. They testified that their revised proposal was easier to administer because it would not require the adoption, utilization, and enforcement of a common definition for commercial and industrial sales. They also testified that the tax rates contained in their proposal are more attuned to the economic realities of the electric utility industry in North Dakota than are the rates in the bill draft.

The committee considered a bill draft relating to electrical generating plants subject to the privilege tax on coal conversion facilities. This bill draft would have defined coal conversion facilities for purposes of the coal conversion tax as electrical generating plants, with all additions thereto, which use coal as a fuel source to generate electrical power and which have electrical energy generation capacity of 80,000 kilowatts or more. The effect of the bill draft would be to extend the coal conversion tax to Montana-Dakota Utilities Company's Heskett Plant in Mandan.

The committee received testimony that the bill draft would have a negative impact on tax revenue to Morton County and thus did not meet the committee's revenue neutrality goal.

Conclusion

The committee makes no recommendation concerning its study of the impact of competition on the generation, transmission, and distribution of electric energy within this state.

TERRITORIAL INTEGRITY ACT STUDY

The Territorial Integrity Act was enacted by the Legislative Assembly in 1965 and is codified as NDCC Sections 49-03-01 through 49-03-01.5. These sections provide:

49-03-01. Certificate of public convenience and necessity - Secured by electric public utility. No electric public utility henceforth shall begin construction or operation of a public utility plant or system, or of an extension of a plant or system, except as provided below, without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which it has lawfully commenced operations. If any electric public utility in constructing or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.

49-03-01.1. Limitation on electric transmission and distribution lines,

extensions, and service by electric public utilities. No electric public utility henceforth shall begin in the construction or operation of a public utility plant or system or extension thereof without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation, nor shall such public utility henceforth extend its electric transmission or distribution lines beyond or outside of the corporate limits of any municipality, nor shall it serve any customer where the place to be served is not located within the corporate limits of a municipality, unless and until, after application, such electric public utility has obtained an order from the commission authorizing such extension and service and a certificate that public convenience and necessity require that permission be given to extend such lines and to serve such customer.

49-03-01.3. Exclusions from limitations on electric distribution lines, extension, and service and on issuance of certificates of public convenience and necessity. Sections 49-03-01 through 49-03-01.5 shall not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations; provided, however, that such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission.

Sections 49-03-01 through 49-03-01.5 shall not be construed to require an electric public utility to discontinue service to customers thereof whose places receiving service are located outside the corporate limits of a municipality on July 1, 1965; provided, however, that within ninety days after July 1, 1965, any electric public utility furnishing service to customers whose places receiving service are located outside the corporate limits of a municipality shall file with the commission a complete map or maps of its electric distribution system showing all places in North Dakota which are located outside the corporate limits of a municipality and which are receiving its service as of July 1, 1965. After ninety days from July 1, 1965, unless a customer whose place being served is located outside the corporate limits of a municipality is shown on

said map or maps, it shall be conclusively presumed that such customer was not being served on July 1, 1965, and cannot be served until after compliance with the provisions of section 49-03-01.1.

49-03-01.4. Enforcement of act. If any electric public utility violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining said electric public utility from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe such terms and conditions as it shall deem reasonable and proper.

Provided, further, that nothing herein contained shall be construed to prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

49-03-01.5. Definitions. As used in sections 49-03-01 through 49-03-01.5:

1. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
2. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
3. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.

As enacted, the Territorial Integrity Act included a section that provided:

The public service commission of the state of North Dakota shall not issue its order or its certificate of public convenience and necessity to any electric public utility to extend its electric distribution lines beyond the corporate limits of a municipality or to serve a customer whose place to be served is located outside the corporate limits of a municipality unless the electric cooperative

corporation with lines or facilities nearest the place where service is required shall consent in writing to such extension by such electric public utility, or unless, upon hearing before the commission, called upon notice, shall be shown that the service required cannot be provided by an electric cooperative corporation. Such certificate shall not be necessary if the public service commission approves an agreement between a public utility and a rural electric cooperative serving the area which includes the station to be served in which agreement designates said station to be in an area to be served by the public utility.

In *Montana-Dakota Utilities Co. v. Johanneson*, 153 N.W.2d 414 (N.D. 1967), the North Dakota Supreme Court declared this section to be an unconstitutional delegation of legislative authority.

Although the legislative history of the Territorial Integrity Act is extensive, the rationale for its enactment was summarized in *Capital Electric Cooperative Inc. v. Public Service Commission*, 534 N.W.2d 587 (N.D. 1995). In this case, it was noted that "the Act was adopted at the request of the North Dakota Association of Rural Electric Cooperatives to provide 'territorial protection' for rural electric cooperatives and to prevent public utilities from 'pirating' rural areas," and the "primary purpose of the Act was to minimize conflicts between suppliers of electricity and wasteful duplication of investment in capital-intensive utility facilities." In *Capital Electric*, the North Dakota Supreme Court established a requirement that a request by a new customer for electric service from a public utility must be made before the Public Service Commission may consider whether to issue a certificate of public convenience and necessity to the utility.

The Territorial Integrity Act basically allowed cooperatives to extend service in rural areas and public utilities to extend service in municipal areas without first obtaining a certificate of public convenience and necessity from the Public Service Commission, the theory being that the delineation of service areas would allow each type of enterprise to expand within its own sphere without conflict with each other. Problems arose, however, as the public utility companies believed that by being confined to municipal areas except as provided in the Act, they were being denied a fair share of the business arising in the rural "growth" areas. This objection to the effect of the Territorial Integrity Act resulted in *Montana-Dakota Utilities Co. v. Johanneson*, which squarely attacked its constitutionality. In *Johanneson*, the public utility companies took the position the law was an unconstitutional classification for several reasons. They contended cooperatives were given a monopoly in rural areas and were allowed to operate without Public Service Commission regulation, while the public utilities were regulated in every respect by that agency. They

claimed that cooperatives could infringe on the existing service areas of public utility companies in rural localities and that new customers could be gained in municipal areas only if there was no interference with cooperative services already provided in the municipality. They also asserted cooperatives had a right to complain against public utilities' actions, but the utilities had no such right against actions of the cooperatives. Thus, they maintained the Territorial Integrity Act was unfair, arbitrary, and unreasonable, and the Act discriminated against the public utility companies and the public generally.

The North Dakota Supreme Court in *Johanneson* upheld the constitutionality of the Act in all but one respect. It held that although the Act treated public utilities and cooperatives dissimilarly, the classification was not objectionable as it was based on legally justifiable distinctions. While public utilities were denied the right under the Act to complain of improper actions by cooperatives, the right remained to bring an action in the courts of the state for redress of any injury that might be suffered. Thus, the public utilities did have an adequate remedy and were not prejudiced.

However, the court found otherwise with regard to Section 3 of the Act (NDCC Section 49-03-01.2) which conditioned the issuance of certificates of public convenience and necessity on the written consent of the nearest cooperative, or upon a finding a cooperative could not provide the service. Here, the court found that it was "the cooperative, and not the public service commission . . . that determines whether a certificate of public convenience and necessity shall be granted to a public utility in the area outside the limits of the municipality" and that "[n]o guidelines are set out in the law to be followed by the cooperative in making such determination, and no safeguards are provided against arbitrary action" Thus, the court held that where "the Act attempts to delegate, to either the Public Service Commission or the cooperative, powers and functions which determine such policy and which fix the principles which are to control, the Act is unconstitutional." Likewise, the court found that the portion of the Act that permitted supplying of service without certificates if a "consent" agreement was entered by the cooperative and public utility as to service areas also was unconstitutional, as again the cooperative was permitted to determine whether a certificate should be granted.

The impact of *Johanneson* immediately became evident. Because the provisions of the Territorial Integrity Act allowing for "consent" agreements in lieu of certificates of public convenience and necessity were declared unconstitutional, it was apparent the caseload of the commission and the issuance of certificates would increase substantially. In anticipation of this increase and to reduce the delay caused by the notices and hearings necessary for the issuance of certificates, the Public Service Commission requested an opinion of the Attorney General as to whether conditional certificates

could be issued without the usual full-scale hearing and determination. The Attorney General, in an opinion dated October 30, 1967, declared that the issuing of conditional certificates without hearing was proper, provided the controversy was fully submitted to the commission by an interested party in such a manner so a decision could be made, and the parties waived the notice and hearing required in the issuance of a certificate of public convenience and necessity. Thus, the issuing of temporary certificates under certain conditions was allowed.

When NDCC Section 49-03-01.2 was declared unconstitutional, the legislative directions to the Public Service Commission were eliminated, and no criteria upon which the commission could make its decisions remained. However, this deficiency was remedied by the court in *Application of Otter Tail Power Co.*, 169 N.W.2d 415, 418 (N.D. 1969), in which the court established that in addition to customer preference, factors to be considered in determining whether an application for a certificate of public convenience and necessity should be granted include "the location of the lines of the supplier; the reliability of the service which will be rendered by them; which of the proposed suppliers will be able to serve the area more economically and still earn an adequate return on its investment; and which supplier is best qualified to furnish electric service to the site designated in the application and which also can best develop electric service in the area in which such site is located without wasteful duplication of investment service." Thus, customer preference is not a controlling factor but only one of a number of factors that must be considered for a certificate of public convenience and necessity to be granted.

Previous Studies

1967-68 Study

In 1967 the Legislative Assembly approved House Concurrent Resolution No. "B-2" which requested a two-year study be made of the laws relating to certificates of public convenience and necessity for extensions of service by electric suppliers and the extensions of electric transmission and distribution lines of electric utilities. The resolution directed that a committee composed of three members of the House of Representatives and two members of the Senate meet during the succeeding biennium with two persons representing electric public utilities and two persons representing rural electric cooperatives to study what method, if any, should be provided to resolve territorial disputes between electrical suppliers, whether more lucrative market areas were essential to the efficiency of rural electric cooperatives, and if rural electric cooperatives should be regulated in the same manner as rural telephone cooperatives.

This committee received testimony from the Public Service Commission, rural electric cooperatives, and public utility companies. The public service

commissioners were basically of the opinion that the Territorial Integrity Act was beneficial, and they pointed out some areas where improvements could be made. The position of the rural electric cooperatives was that the Territorial Integrity Act was working and that fair and adequate guidelines were being developed by the Public Service Commission in following the interpretation placed on the law by the North Dakota Supreme Court in *Johanneson*. The cooperatives maintained any change in the law would result in considerable expense to cooperative and public utility companies alike, as interpretive measures would have to begin anew. The position of the public utility companies was that the Territorial Integrity Act stifled growth and created confusion and uncertainty as the utilities are not allowed to expand with the population move from city and rural areas into the fringe locations around cities. The public utilities maintained that in order to serve their customers economically and provide a return to their stockholders, they must also continue to grow, and the only area where growth was possible was in the metropolitan fringe areas. The committee made no recommendation as a result of this study.

1997-98 Study

In conducting its study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the 1997-98 interim Electric Utilities Committee reviewed the history and operation of the Territorial Integrity Act. The committee received testimony from representatives of the state's investor-owned utilities and the state's rural electric cooperatives.

Representatives of Montana-Dakota Utilities Company testified that the Territorial Integrity Act is unfair in fostering effective electric competition in North Dakota. They argued that it is a barrier to giving customers throughout the state the ability to make economic energy choices and as such should be repealed and fair play rules substituted in its place for all competitors. They testified if rural electric cooperatives wish to pursue loads in urban areas, in competition with public utilities, then rural electric cooperatives engaging in such activity should no longer qualify for favorable financing arrangements with the federal government, exemption from state and federal income taxes, preferential access to low-priced federal power, and potential for debt forgiveness by the Rural Utilities Service, and should be subject to the same regulatory overview as public utilities.

The committee received testimony from a representative of Otter Tail Power Company that the Territorial Integrity Act is not accomplishing what its stated objectives are--to efficiently allocate scarce resources and to minimize disputes between electric suppliers--because the Act leads to a wasteful duplication of electrical facilities and increases, rather than minimizes, the likelihood of disputes between electric suppliers.

Representatives of the state's rural electric cooperatives responded that the Territorial Integrity Act is working well and is serving the purposes for which it was enacted. The committee received testimony that the state's investor-owned utilities have exclusive territories within the state's municipalities the rural electric cooperatives cannot penetrate and that the Act avoids the costly duplication of utility infrastructure. They noted there is substantial undeveloped land within the service territories of the investor-owned utilities while there is an outmigration of population in the rural areas and a corresponding decline in electrical usage. They testified that if it were not for some larger industrial and commercial loads, and some growth around cities in areas that were previously rural, rural electric cooperatives would have experienced a substantial decline in their sales, and it makes no sense to expand investor-owned utility territorial growth at the expense of the rural electric cooperatives that have invested in rural North Dakota. Representatives of the rural electric cooperatives responded to the charge investor-owned utilities are competitively disadvantaged by the Territorial Integrity Act by testifying that since enactment of the Territorial Integrity Act, investor-owned utilities have continued to grow in customers and revenue and have not lost market share to rural electric cooperatives.

Representatives of the rural electric cooperatives also argued that the Territorial Integrity Act is not responsible for rural electric cooperative expansion into urban areas; that rural electric cooperatives can continue to serve their traditional service areas even when these areas become urbanized; and that the growth of the local rural electric cooperative around Fargo is overstated. The committee made no recommendation as a result of this study.

1999 Proposed Legislation

Senate Bill No. 2389 (1999), as introduced, would have revised the Territorial Integrity Act. The bill provided that after July 31, 1999, an electric public utility, if authorized by franchise, is to provide electric service to all customers within the corporate limits of a municipality, except that a rural electric cooperative could continue to provide service to electric customers it was serving within a municipality on July 31, 1999, if allowed by the municipality. The bill provided that a rural electric cooperative could not provide electric service to any new customer within the corporate limits of the municipality after July 31, 1999. If a municipality did not allow a rural electric cooperative to continue electric service to existing customers within the municipality, the rural electric cooperative could remove its lines, plant, or system or sell its lines, plant, or system to the franchised electric public utility. The bill also brought rural electric cooperatives under the enforcement provisions of the Territorial Integrity Act and allowed the selling or trading of facilities or customers upon agreement between a

rural electric cooperative and an electric public utility, subject to the approval of the city if sales or trades were made within the city or subject to the approval of the Public Service Commission if outside the corporate limits of a municipality. This bill was substantially amended to remove changes to the state's Territorial Integrity Act and as enacted called for the study of the state's Territorial Integrity Act.

Exclusive Electric Service Area Laws of Surrounding States

South Dakota

South Dakota Codified Laws Sections 49-34A-42 through 49-34A-44 and Sections 49-34A-48 through 49-34A-59 govern exclusive electric service areas in that state. Each electric utility has the exclusive right to provide electric service at retail at each location where it served a customer on March 21, 1975, and to each present and future customer in its assigned service area. An electric utility cannot render or extend electric service at retail within the assigned service area of another electric utility without the other electric utility's consent and without approval by the South Dakota Public Utilities Commission. An electric utility can extend its facilities to the assigned service area of another electric utility, however, if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

The boundaries of each assigned service area, outside incorporated municipalities, are a line equidistant between the electric lines of adjacent electric utilities as they existed on March 21, 1975, provided that these boundaries may be modified by the South Dakota Public Utilities Commission to take account of natural and other physical barriers that would make service of electric power and energy beyond those barriers economically impracticable and must be modified to take into account existing contracts or to take into account orders entered before July 1, 1975, by the Electric Mediation Board. If a single electric utility provided electric service within a municipality on March 21, 1975, the entire municipality constitutes a part of the assigned service area of that electric utility. If two or more electric utilities provided electric service in a municipality on March 21, 1975, the boundaries of the assigned service areas within the incorporated municipality must be assigned pursuant to the equal distance concept as applied to lines located only within the municipal boundaries.

Notwithstanding the establishment of assigned service areas for electric utilities, new customers at new locations that develop after March 21, 1975, located outside municipalities as the boundaries existed on March 21, 1975, and who require electric service with a contracted minimum demand of 2,000 kilowatts or more are not obligated to take electric service from the electric utility having the assigned service area where the customers are located if the South Dakota Public Utilities

Commission determines after consideration of the following factors:

1. The electric service requirements of the load to be served.
2. The availability of an adequate power supply.
3. The development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto.
4. The proximity of adequate facilities from which electric service of the type required may be delivered.
5. The preference of the consumer.
6. Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill the customer's requirements.

Minnesota

Minnesota Statutes Section 216B.37 provides that the state of Minnesota is divided into geographic service areas within which a specified electric utility is to provide electric service to customers on an exclusive basis. For purposes of the Minnesota exclusive electric service area law, the term "electric utility" includes facilities owned by a municipality or by a cooperative electric association.

Within six months from April 12, 1974, each electric utility was required to file with the Minnesota Public Utilities Commission a map showing all its electric lines outside incorporated municipalities and was required to submit a list of all municipalities in which it provided electric service on April 12, 1974. If two or more electric utilities served a single municipality, the commission could require each utility to file with the commission a map showing its electric lines within the municipality. Within 12 months from April 12, 1974, the commission established the assigned service area or areas of each electric utility and prepared a map to show the boundaries of the assigned service area of each electric utility. To the extent it was not inconsistent with the expressed legislative policy, the boundaries of each assigned service area, outside incorporated municipalities, was a line equidistant between electric lines of adjacent electric utilities as they existed on April 12, 1974.

Except as otherwise provided, each electric utility has the exclusive right to provide electric service at retail to each present and future customer in its assigned service area, and no electric utility may render or extend electric service at retail within the assigned service area of another electric utility unless the electric utility consents, but an electric utility can extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area. If a municipality owning and operating an electric utility extends its corporate boundaries through annexation or consolidation or determines to extend its service territory within its existing corporate

boundaries, the municipality may purchase the facilities of the electric utilities serving the area.

There are two exceptions to the exclusive service right. After April 12, 1974, the exclusion by incorporation, consolidation, or annexation of any part of the assigned service area of an electric utility within the boundaries of a municipality does not impair the rights of the electric utility to continue and extend electric service at retail throughout any part of its assigned service area unless the municipality that owns and operates an electric utility elects to purchase the facilities and property of the electric utility. The other exception is for large customers. Customers located outside municipalities who require electric service with a connected load of 2,000 kilowatts or more are not obligated to take electric service from the electric utility having the assigned service area where the customer is located if the Public Utilities Commission determines after consideration of the following factors:

1. The electric service requirements of the load to be served.
2. The availability of an adequate power supply.
3. The development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto.
4. The proximity of adequate facilities from which electric service of the type required may be delivered.
5. The preference of the customer.
6. Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

As in South Dakota, Minnesota electric utilities may extend electric lines for electric service to their own utility property and facilities.

Montana

The Montana Territorial Integrity Act is codified at Montana Code Annotated Section 69-5-101 et seq.; however, the provisions of the Act were substantially amended in the Electric Utility Industry Restructuring and Customer Act of 1997 to facilitate the implementation of that Act. Each electric service facilities provider has the right to provide electric service facilities to all premises being served by it or to which any of its facilities are attached on May 2, 1997. An electric utility is an entity other than an electric cooperative which provides electric service facilities to the public, and an electric cooperative is a rural electric cooperative or a foreign corporation admitted under the Montana cooperative statutes to do business in that state.

The electric facilities provider having a line nearest the premises provides electric service facilities to the premises initially requiring service after May 2, 1997, which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer. A customer or another electric facilities

provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost. An electric utility has the right to furnish electric service facilities to any premises if the estimated connected load for full operation at the premises will be 400 kilowatts or larger within two years from the date of initial service and if the electric utility can extend its facilities to the premises at less cost to the electric utility than the electric cooperative cost. The estimated connected load must be determined from the plans and specifications prepared for construction of the premises or, if an estimate is not available, must be determined by agreement of the electric facilities provider and the customer. The fact that the actual connected load after two years from the date of initial service is less than 400 kilowatts does not affect the right of the electric facilities provider initially providing electric service facilities to continue to provide electric service facilities to the premises.

Utilities can enter agreements that identify the geographical area to be exclusively served by each electric facilities provider that is a party to the agreement overriding the provisions of the Territorial Integrity Act. However, all agreements between electric facilities providers must be submitted to and approved by the Montana Public Service Commission. In approving agreements, the Montana Public Service Commission is required to consider the reasonable likelihood that the agreement will not cause a decrease in the reliability of electric service to the existing or future ratepayers of any electric facilities provider party to the agreement and the reasonable likelihood the agreement will eliminate existing or potentially uneconomic duplication of electric service facilities.

Testimony

The committee received testimony from the Public Service Commission that the 10 issues or factors that the commission considers in Territorial Integrity Act disputes are:

1. From whom does the customer prefer electric service?
2. What electric suppliers are operating in the general area?
3. What electric supply lines exist within a two-mile radius of the location to be served, and when were they constructed?
4. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
5. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
6. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?

7. Which suppliers extended electric service would best serve orderly and economic development of electric service in the general area?
8. Would approval of the application result in wasteful duplication of investment or service?
9. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
10. Will service by either of the electric suppliers in the area unreasonably interfere with the service or system of the other?

Items 1, 9, and 10 were developed by the Public Service Commission while items 2, 3, 4, 5, 6, 7, and 8 are taken from Supreme Court decisions concerning the Territorial Integrity Act. The Public Service Commission reported that it received 483 Territorial Integrity Act applications between 1988 and the present. Of these, 458 applications were granted, 11 applications were denied, 12 applications were withdrawn, and two are pending. The Public Service Commission reported that rural electric cooperatives filed 33 objections of which 15 applications were granted, 11 applications were denied, and seven applications were withdrawn. There were four applications appealed during this time period and one complaint appealed.

The committee received testimony from representatives of the state's investor-owned utilities that the Territorial Integrity Act and subsequent court interpretations have provided the distribution cooperatives with an opportunity to infringe upon the cities that are served by investor-owned utilities. They testified that over the years this situation has cut off their opportunity to share in the growth of the communities they serve and thus it is not a question of whether a change in the law is necessary but what changes need to take place to ensure the future, long-term viability of all the electric service providers in the state. Representatives of the state's investor-owned utilities testified that rural electric cooperatives currently enjoy virtually all of the growth opportunities in the state.

The committee received testimony from representatives of Montana-Dakota Utilities Company concerning the municipalization of electric service in Watford City and Killdeer. The committee received testimony that the cities of Watford City and Killdeer may not renew Montana-Dakota Utilities Company's franchise to provide electric service in these cities, as they may form municipal utilities and invite McKenzie Rural Electric Cooperative to supply electricity to these cities. This testimony indicated that although representatives of the state's rural electric cooperatives testified to the contrary, this is an example of a rural electric cooperative moving into an area served by an investor-owned utility. This testimony indicated that the outcome of this dispute will eventually be of interest to the Legislative Assembly in that should Montana-Dakota Utilities Company lose its franchise, its electric and natural gas

property will be removed from the property tax bases of these cities. With a reduced tax base, tax revenues to these cities will be reduced, resulting in less revenue to provide city services and school funding. This may result in these cities being classified as "property poor" and thus eligible for increased funding from the Legislative Assembly. In summary, representatives of Montana-Dakota Utilities Company testified that the activities of McKenzie Rural Electric violate the intent of the original Rural Electrification Act and represent an effort by a rural electric cooperative to move into cities served by an investor-owned utility.

Representatives of the state's rural electric cooperatives testified that the Territorial Integrity Act is working well, and avoids costly duplication of service. They testified that rural electric cooperatives should be able to participate in the state's growth areas as well as rural areas and that Congress never intended to limit cooperatives to serving only remote farmsteads and pasture wells, but federal and state law encouraged cooperatives to grow with their service areas. They testified that as some cities have expanded into the countryside where only the cooperatives were first willing to serve, the investor-owned utilities want to take away these growth areas at great cost to the consumers who built and own their own cooperative business. Representatives of the Association of Rural Electric Cooperatives argued that investor-owned utilities have had a fourfold increase in electric sales, a rate of growth comparable to the rural electric cooperatives, and the recent slowdown in the investor-owned utilities' growth rate is not because of state law, but because the state has not experienced the economic growth occurring in other states. They also said rural electric cooperatives have suffered more from this lack of growth than have the investor-owned utilities.

The committee received testimony from representatives of Fargo, Bismarck, and Minot concerning the

franchising of electricity providers. The committee learned the city of Fargo has entered franchise agreements with two electricity providers--an investor-owned utility and a rural electric cooperative. These franchise agreements are nonexclusive, in that either provider can provide electric service anywhere within the city of Fargo. The committee learned the usual practice is for franchise agreements to be amended to allow the provider to provide service in areas annexed by the city, and if there is a conflict, it is referred to the Public Service Commission for resolution.

Concerning franchise agreements in Bismarck, the committee learned in 1973 Montana-Dakota Utilities Company and Capital Electric Cooperative entered an area services agreement effectively demarcating the area of service by each provider. When Capital Electric Cooperative was granted a franchise by the city of Bismarck to operate within the city, the area service agreement was incorporated into Capital Electric Cooperative's franchise agreement. The committee received testimony from representatives of the city of Bismarck that this system has worked relatively well with only one serious dispute, which was resolved by the Bismarck City Commission without the Public Service Commission becoming involved.

Concerning franchise agreements in Minot, the committee learned the franchise automatically follows into areas annexed by the city, and there has never been a disagreement between Xcel Energy, Inc., and Verendrye Electric Cooperative, the local rural electric cooperative, that has reached the city commission.

Conclusion

The committee makes no recommendation concerning its study of the Territorial Integrity Act.

EMPLOYEE BENEFITS PROGRAMS COMMITTEE

The Employee Benefits Programs Committee has statutory jurisdiction over legislative measures that affect retirement, health insurance, and retiree health insurance programs of public employees. Under North Dakota Century Code (NDCC) Section 54-35-02.4, the committee is required to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs and health and retiree health plans of public employees. Section 54-35-02.4 also requires the committee to take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval and to include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. 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 employee's retirement program, health plan, or retiree health plan which is introduced during a legislative session. The statute provides that any legislation enacted in contravention of these requirements is invalid and benefits provided under that legislation must be reduced to the level in effect before enactment. In addition, Section 54-52.1-08.2 requires the committee to approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements, and Section 18-11-15 requires the committee to receive notice from a firefighters' relief association concerning service benefits paid under a special schedule.

The Legislative Council assigned to the committee a study of the number, qualifications, and selection criteria for vendors and providers selected by the Public Employees Retirement System Board for the defined contribution retirement plan and the deferred compensation program.

Committee members were Representatives Jim Poolman (Chairman), Glen Froseth, Bette Grande, Serenus Hoffner, and Joe Kroeber and Senators Ralph Kilzer, Karen K. Krebsbach, Carolyn Nelson, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 2000, as the deadline for submission of retirement, health, and retiree health proposals. The deadline provided the committee

and the consulting actuary of each affected retirement, health, or retiree health program sufficient time to discuss and evaluate the proposals. The committee allowed only legislators and those agencies entitled to the bill introduction privilege to submit retirement, health, and retiree health proposals for consideration.

The committee reviewed each submitted proposal and solicited testimony from proponents; retirement and health program administrators; interest groups; and other interested persons.

Under NDCC Section 54-35-02.4, each retirement, insurance, or retiree insurance program is required to pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that program.

The committee referred every proposal submitted to it to the affected retirement or insurance program and requested the program authorize the preparation of actuarial reports. The Public Employees Retirement System used the actuarial services of The Segal Company in evaluating proposals that affected retirement programs and the actuarial services of Deloitte & Touche, LLP, in evaluating proposals that affected the public employees health insurance program. The Teachers' Fund for Retirement Board used the actuarial services of Watson Wyatt and Company in evaluating proposals that affected the Teachers' Fund for Retirement.

The committee obtained written actuarial information on each proposal. In evaluating each proposal, the committee considered the proposal's actuarial cost impact; testimony by retirement and health insurance program administrators, interest groups, and affected individuals; the impact on state general or special funds and on the affected retirement program; and other consequences of the proposal or alternatives to it. Based on these factors, each proposal received a favorable recommendation, unfavorable recommendation, or no recommendation.

A copy of the actuarial evaluation and the committee's report on each proposal will be appended to the proposal and delivered to its sponsor. Each sponsor is responsible for securing introduction of the proposal in the 57th Legislative Assembly.

Teachers' Fund for Retirement

Former NDCC Chapter 15-39 established the teachers' insurance and retirement fund. This fund, the rights to which were preserved by Section 15-39.1-03, provides a fixed annuity for full-time teachers whose rights vested in the fund before July 1, 1971. The plan was repealed in 1971 when the Teachers' Fund for Retirement was established with the enactment of 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 became effective July 1, 1971. The Teachers' Fund for Retirement is administered by a board of trustees. A separate state investment board is responsible for the investment of the trust assets, although the Teachers' Fund for Retirement Board establishes the asset allocation policy. The Retirement and Investment Office is the administrative agency for the Teachers' Fund for Retirement. The Teachers' Fund for Retirement is a qualified governmental defined benefit retirement plan. For governmental accounting standards board purposes, it is a cost-sharing multiple employer public employee retirement system.

All certified teachers of any public school in the state participate in the Teachers' Fund for Retirement. This includes teachers, supervisors, principals, and administrators. Noncertified employees such as teacher's aides, janitors, secretaries, and drivers are not allowed to participate in the Teachers' Fund for Retirement. Eligible employees become members at their date of employment.

All active members contribute 7.75 percent of their salary per year. The employer may "pick up" the member's assessments under the provisions of Internal Revenue Code Section 414(h). The member's total earnings are used for salary purposes, including overtime, and including nontaxable wages under a Section 125 plan, but excluding certain extraordinary compensation such as fringe benefits or unused sick or vacation leave.

The district or other employer that employs a member contributes 7.75 percent of the member's salary. Employees receive credit for service while a member. A member may also purchase credit for certain periods, such as time spent teaching at a public school in another state, by paying the actuarially determined cost of the additional service. Special rules and limits govern the purchase of additional service.

Members are eligible for a normal service retirement benefit at age 65 with credit for three years of service, or when the sum of the member's age and service is at least 85--the Rule of 85. The monthly retirement benefit is 1.88 percent of final average compensation, defined as the average of the member's highest three-plan year salaries with monthly benefits based on one-twelfth of this amount, times years of service. Benefits are paid as a monthly life annuity, with a guarantee that if the payments made do not exceed the member's assessments plus interest, determined as of the date of retirement, the balance will be paid in a lump sum to the member's beneficiary.

A member may retire early after reaching age 55 with credit for three years of service. In this event, the monthly benefit is 1.88 percent of final average compensation times years of service, multiplied by a factor that reduces the benefit six percent for each year from the earlier of age 65 or the age at which current service plus age equals 85.

Members are eligible for disability retirement benefits provided the member has credit for at least one year of service. The monthly disability retirement benefit is 1.88 percent of final average compensation times years of service with a minimum 20 years of service. The disability benefit commences immediately upon the member's retirement. Benefits cease upon recovery or reemployment. Disability benefits are payable as a monthly life annuity with a guarantee that, at the member's death, the sum of the member's assessments plus interest as of the date of retirement will be paid in a lump sum to the member's beneficiary. All alternative forms of payment are also permitted in the case of disability retirement. Disability benefits are converted to normal retirement benefits when the member reaches normal retirement age or age 65, whichever is earlier. Members with at least three years of service who do not withdraw their contributions from the fund are eligible for a deferred termination benefit. The deferred termination benefit is a monthly benefit of 1.88 percent of final average compensation times years of service. Both final average compensation and service are determined at the time the member leaves active employment. Benefits may commence unreduced at age 65 or when the Rule of 85 is met. Reduced benefits may commence at or after age 55 if the member is not eligible for an unreduced benefit. The form of payment is the same for normal retirement.

All members leaving covered employment with less than three years of service are eligible to withdraw or receive a refund benefit. Optionally, vested members (those with three or more years of service) may withdraw their assessments plus interest in lieu of the deferred benefits otherwise due. The member who withdraws receives a lump sum payment of their employee assessments, plus the interest credited on these contributions. Interest is credited at six percent.

To receive a death benefit, death must have occurred while an active or inactive, nonretired member. Upon the death of a nonvested member, a refund of the member's assessments and interest is paid. Upon the death of a vested member, the beneficiary may elect the refund benefit; payment for 60 months of the normal retirement benefit, based on final average compensation and service determined at the date of death; or a life annuity of the normal retirement benefit, based on final average compensation and service as of the date of death, but without applying any reduction for the member's age at death.

There are optional forms of payment available on an actuarial equivalent basis. These include a life annuity payable while either the participant or the participant's beneficiary is alive, "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the member while both the member and beneficiary are alive, reducing to 50 percent of this amount if the member predeceases the beneficiary, and "popping-up" to the original life annuity if the beneficiary predeceases the member; a life annuity payable to the

member, with a guarantee that, should the member die prior to receiving 120 payments, the payments will be continued to a beneficiary for the balance of the 10-year period; or a nonlevel annuity payable to the member, designed to provide a level total income when combined with the member's Social Security benefit. From time to time, the Teachers' Fund for Retirement statutes have been amended to grant certain postretirement benefit increases. However, the Teachers' Fund for Retirement has no automatic cost-of-living increase features.

Since 1991 there have been several plan changes in the Teachers' Fund for Retirement. Effective July 1, 1991, the benefit multiplier was increased from 1.275 percent to 1.39 percent for all future retirees. The Legislative Assembly also provided a postretirement benefit increase for all annuitants receiving a monthly benefit on June 30, 1991. The monthly increase was the greater of a 10 percent increase or a level increase based on years of service and retirement date of \$3 per year of service for retirements before 1980, \$2 per year of service for retirements from 1980 to 1983, and \$1 per year of service for retirements from 1984 through June 30, 1991. The minimum increase was \$5 per month, and the maximum increase was \$75 per month.

In 1993 the benefit multiplier was increased from 1.39 percent to 1.55 percent for all future retirees. The Legislative Assembly also provided a postretirement benefit increase for all annuitants receiving a monthly benefit on June 30, 1993. The monthly increase was the greater of a 10 percent increase or a level increase based on years of service and retirement date of \$3 per year of service for retirements before 1980, \$2.50 per year of service for retirements from 1980 to 1983, and \$1 per year of service for retirements from 1984 through June 30, 1991. The minimum increase at this time was \$5 per month, and the maximum increase was \$100 per month. The minimum retirement benefit was increased to \$10 times years of service up to 25, plus \$15 times years of service greater than 25. Previously, it had been \$6 up to 25 years of service plus \$7.50 over 25 years of service. The disability benefit was also changed at this time to 1.55 percent of final average compensation times years of service using a minimum of 20 years of service.

In 1997 the benefit multiplier was increased from 1.55 percent to 1.75 percent for all future retirees, the member assessment rate and employer contribution rate were increased from 6.75 percent to 7.75 percent, and a \$30 per month benefit improvement was granted to all retirees and beneficiaries.

In 1999 the vesting requirement was reduced from five years of service to three years of service. The early retirement reduction factor was changed to six percent per year from the earlier of age 65 or the date as of which age plus service equals 85 rather than from 65 in all cases. An ad hoc cost-of-living adjustment was provided for all retirees and beneficiaries. This increase was equal to an additional \$2 per month for each year of service plus \$1 per month for each year since the

member's retirement. Finally, the benefit multiplier was increased from 1.75 percent to 1.88 percent.

The latest available report of the consulting actuary was dated July 1, 2000. The consulting actuary reported that the primary purposes of the valuation report are to determine the adequacy of the current employer contribution rate, to describe the current financial condition of the Teachers' Fund for Retirement, and to analyze changes in the fund's condition. Concerning the financing objectives of the Teachers' Fund for Retirement Board of Trustees, the consulting actuary reported that the member and employer contribution rates are intended to be sufficient to pay the fund's normal cost and to amortize the fund's unfunded actuarial accrued liability in level payments over a period of 20 years from the valuation date. The funding period is set by the board of trustees and is considered reasonable by the actuary.

As of July 1, 2000, the employer contribution rate needed in order to meet these goals was 1.47 percent. This is less than the 7.75 percent rate currently required by law, so the current contribution rate is adequate. The margin between the rate mandated by law and the rate necessary to fund the unfunded actuarial accrued liability in 20 years is 6.28 percentage points. This margin increased from 1.66 percentage points as of July 1, 1999, mainly because of the revision of the method used to compute the actuarial value of assets and continued strong investment performance. As a result, the unfunded actuarial accrued liability was eliminated. The unfunded actuarial accrued liability was \$135.3 million as of July 1, 1999, and decreased to a negative \$20.6 million as of July 1, 2000. The funded ratio, the ratio of the actuarial value of assets to the actuarial accrued liability, increased from 88.6 percent as of July 1, 1999, to 101.6 percent as of July 1, 2000.

Actuarial assumptions and methods are set by the board of trustees, based upon recommendations made by the plan's consulting actuary. These assumptions and methods were updated following an analysis of plan experience for the preceding five years. The assumed investment return rate of eight percent was left unchanged, but several other assumptions were modified including retirement rates, disability rates, salary increase rates, the inflation rate, and mortality rates for active and nondisabled retirees. The Teachers' Fund for Retirement also uses an actuarial value of assets, a smoothed value. The method that had been in use recognized realized and unrealized gains and losses over a five-year period. This was replaced with a method that recognizes total earnings greater or less than expected, based on the eight percent assumption, over five years.

The fund had 16,191 total members on July 1, 2000. Of this total, 10,025 were active members, 4,827 were retired members, 1,130 were inactive vested members, and 209 were inactive nonvested members. The ratio of active members to retired members is 2.1 to 1. The total

payroll was \$323 million. The average salary was \$32,223 and the average benefit was \$11,643. The assets at market value were \$1,405,200,000 with an actuarial value of \$1,308,500,000.

There has been a 12.1 percent average annual increase in the market value of assets since 1990 and an 11.9 percent average annual increase in the actuarial value of assets since 1990. The actuarial value of assets is 93.1 percent of the market value. The estimated yield on the market value of assets was 11.6 percent, and the estimated yield based on the actuarial value of assets was 13.3 percent. There has been an 11.9 percent average annual compound return on market value since 1990, and a 9.9 percent average annual compound return on actuarial value since 1990. Contributions for the year ending June 30, 2000, were \$53.6 million while benefits and refunds were \$57.4 million. Thus, external cash flow as a percentage of market value was a -.3 percent. While the statutory contribution rate is 7.75 percent, the required contribution rate for the plan year is 1.47 percent. Thus, the available margin is 6.28 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. 3

Sponsor: Representative Michael D. Brandenburg

Proposal: Provides that if a retired teacher returns to teaching and subsequently retires with more than four years of additional credited service, the retired teacher's annuity for all years of service must be computed under NDCC Section 15-39.1-10(2) (age 65 or Rule of 85).

This bill was withdrawn at the request of the sponsor because similar provisions were incorporated into Bill No. 70.

Actuarial Analysis: The consulting actuary reported that the actuarial impact on the Teachers' Fund for Retirement would depend on the number of cases in which members retired, returned to work, and remained

at work on a full-time or nearly full-time basis for at least four years. Currently, only two to three retirees return to teaching on a full-time basis each year, but enactment of this bill might increase the number. Some of these, however, will not stay four or more years. If only one retiree met these conditions, the additional cost would be too small to change the fund's margin by even one basis point, but if there were ten similar cases every year, then the average cost would be around 25 basis points per year.

Committee Report: No recommendation as this bill was withdrawn at the request of the sponsor.

Bill No. 69

Sponsor: Board of Trustees

Proposal: Increases the benefit multiplier from 1.88 to 2.00 percent; provides a postretirement benefit increase of \$2 per month multiplied by a member's number of years of service credit plus \$1 per month multiplied by the number of years since the member's retirement; also provides for an automatic benefit increase of five-tenths of one percent of an individual's current monthly benefit, and the increased benefit would be payable each month beginning on July 1 of each year of the ensuing biennium and beyond.

The committee amended the proposal at the request of the board to increase the automatic increase from five-tenths of one percent of an individual's current monthly benefit to seventy-five hundredths of one percent of an individual's current monthly benefit.

Actuarial Analysis: The reported actuarial cost of the proposal is 4.83 percent of total covered compensation. The reported actuarial cost of the proposal, as amended, is 5.89 percent of total covered compensation. Thus, if Bill No. 69 is enacted, the remaining margin in the Teachers' Fund for Retirement will be .39 percent (6.28 - 5.89 = .39). The actuarial cost impact of the proposed changes are summarized in the following table:

Item	Initial Valuation	Ad Hoc Benefit Improvement (\$2/Month x Service, Plus \$1/Month Per Year Retired)	2.00% Multiplier	Combination of Ad Hoc Benefit Improvement and 2.00% Multiplier	Bill No. 69 as Drafted, With Ad Hoc Benefit Improvement, 2.00% Multiplier and 0.5% Automatic Cost-of-Living Increase	Bill No. 69 as Amended, With Ad Hoc Benefit Improvement, 2.00% Multiplier, and .75% Automatic Cost-of-Living Increase
1. Normal cost	9.82%	9.82%	10.29%	10.29%	10.63%	10.81%
2. Unfunded actuarial accrued liability (millions)	\$(20.6)	\$12.0	\$28.4	\$61.0	\$118.2	\$148.9
3. 20-year contribution rate	1.47%	2.42%	3.36%	4.30%	6.30%	7.36%
4. Margin	6.28%	5.33%	4.39%	3.45%	1.45%	0.39%
5. Expected employer contribution (millions)	\$5.0	\$8.2	\$11.4	\$14.6	\$21.4	\$25.0
6. Increase in expected employer contribution (millions)	0.00%	0.95%	1.89%	2.83%	4.83%	5.89%
7. Increase in expected employer contribution (millions)		\$3.2	\$6.4	\$9.6	\$16.4	\$20.0
8. Funded ratio	101.6%	99.1%	97.9%	95.5%	91.7%	89.8%
9. Funding period (years)		0.6	1.7	3.8	8.9	16.6

Committee Report: Favorable recommendation. This proposal would allow future changes without legislative involvement.

Bill No. 70

Sponsor: Board of Trustees

Proposal: Changes the definition of contract to include written agreements with special education units; changes the definition of teacher to include persons employed by state agencies and special education units and persons contractually employed by a separate state institution, state agency, special education unit, school board, or other governing body of a school district under a third-party contract; reduces the time period within which a retired teacher may return to covered employment from 60 calendar days to 30 calendar days and allows the retired member to return to covered employment for less than four hours each day and continue to receive a monthly retirement benefit or return to covered employment for four or more hours each day for a maximum of 90 working days and continue to receive a monthly retirement benefit; provides that if a teacher subsequently retires with more than two years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to NDCC Chapter 15-39.1 based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to Chapter 15-39.1 based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received; provides that certain Teachers' Fund for Retirement records relating to the retirement benefits of a member or a beneficiary may be disclosed to a member's participating employer, the Public Employees Retirement System, state or federal agencies, and member interest groups approved by the board.

The committee amended the proposal at the request of the Teachers' Fund for Retirement Board of Trustees to remove state agency from the definition of teacher; change the return-to-work provisions from the current limit of 90 working days of four or more hours of teaching to a maximum of 700 hours per year; and incorporate the provisions of Employee Benefits Programs Committee Bill No. 3 which provide that if a retired teacher returns to teaching and subsequently retires with more than four years of additional credited service, the retired teacher's annuity for all years of service must be computed under NDCC Section 15-39.1-10(2) (age 65 or Rule of 85) but change the recalculation from four years to five years of additional credited service.

Actuarial Analysis: The consulting actuary does not believe the effect of these changes is material. The consulting actuary reported that it is difficult to determine

a precise estimate of the cost of the bill, given that much will depend on the number of retirees who elect to return to teaching on a full-time basis. However, the consulting actuary believes that the cost will probably fall in the range of from .02 percent of pay to .10 percent of pay. Expressed as an annual dollar figure, this is equivalent to an increase of \$68,000 to \$340,000 per year, based on the current payroll.

Committee Report: Favorable recommendation.

Bill No. 95

Sponsor: Senator Ray Holmberg

Proposal: Allows retired teachers to return to teaching in critical shortage areas or disciplines as determined by the Teachers' Fund for Retirement Board of Trustees by rule.

Actuarial Analysis: The consulting actuary reported that this bill would not have a material actuarial impact. However, the consulting actuary believes that the Teachers' Fund for Retirement Board of Trustees is not the appropriate body to make determinations concerning critical shortage areas.

Committee Report: Favorable recommendation. However, the committee was concerned whether the Teachers' Fund for Retirement Board of Trustees is the appropriate entity to determine critical shortage geographical areas or subject disciplines.

Bill No. 226

Sponsor: Board of Trustees

Proposal: Establishes the Teachers' Fund for Retirement plan as both a contributory and noncontributory retirement plan.

Actuarial Analysis: The consulting actuary reported that this bill will have no impact on the actuarial status of the Teachers' Fund for Retirement.

Committee Report: Favorable recommendation.

Public Employees Retirement System

The Public Employees Retirement System is governed by NDCC Chapter 54-52 and includes the Public Employees Retirement System main system, judges' retirement system, National Guard retirement system, and an optional defined contribution retirement plan; Highway Patrolmen's retirement system; and retiree health benefits fund. The plan is supervised by the Retirement Board and covers most employees of the state, district health units, and the Garrison Diversion Conservancy District. Elected officials and officials first appointed before July 1, 1971, can choose to be members. Officials appointed to office after that date are required to be members. Most Supreme Court and district court judges are members of the plan but receive benefits different from other members. A county, city, or school district may choose to participate on completion of an employee referendum and on execution of an agreement with the Retirement Board. Political

subdivision employees are not eligible to participate in the defined contribution retirement plan. The Retirement Board also administers the uniform group insurance, life insurance, flexible benefits, deferred compensation, and Chapter 27-17, judges' retirement programs. Chapter 27-17, judges' retirement program, is being phased out of existence except to the extent its continuance is necessary to make payments to retired judges and their surviving spouses and future payments to judges serving on July 1, 1973, and their surviving spouses as required by law.

Members of the main system and judges are eligible for a normal service retirement benefit at age 65 or when age plus service is equal to at least 85--the Rule of 85. Members of the National Guard retirement system are eligible for a normal service retirement at age 55 and three consecutive years of service. The retirement benefit for members of the main system is 1.89 percent of final average salary multiplied by years of service. The retirement benefit for members of the judges' retirement system is 3.50 percent of final average salary for the first 10 years of service, 2.80 percent for the next 10 years of service, and 1.25 percent for service in excess of 20 years. The retirement benefit for members of the National Guard retirement system is 1.89 percent of final average salary multiplied by years of service. Members of the main system are eligible for an early service retirement at age 55 with three years of service, members of the judges' retirement system are eligible for early service retirement at age 55 with five years of service, and members of the National Guard retirement system are eligible for an early service retirement at age 50 with three years of service. The retirement benefit for members who elect early service retirement is the normal service retirement; however, a benefit that begins before age 65, or Rule of 85, if earlier, is reduced by one-half of one percent for each month before age 65. The early service retirement benefit for members of the National Guard retirement system is the normal service retirement benefit; however, a benefit that begins before age 55 is reduced by one-half of one percent for each month before age 55. Members of the main system and National Guard retirement system with six months of service who are unable to engage in any substantial gainful activity are eligible for a disability benefit of 25 percent of the member's final average salary at disability with a minimum of \$100 per month. Members of the judges' retirement system with six months of service who are unable to engage in any substantial gainful activity are eligible for a disability benefit of 70 percent of the member's final average salary at disability minus Social Security and workers' compensation benefits paid. Members of the main system and the National Guard retirement system are eligible for deferred vested retirement at three years of service and members of the judges' retirement system are eligible for deferred vested retirement at five years of service. For members of the main system and judges'

retirement system, the deferred vested retirement benefit is the normal service retirement benefit payable at age 65 or the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attainment of age 55. The deferred vested retirement benefit for members of the National Guard retirement system is the normal service retirement benefit payable at age 55. Reduced early retirement benefits may be elected upon attainment of age 50.

The surviving spouse of a deceased member of the main system or National Guard retirement system who had accumulated at least three years of service before normal retirement is entitled to elect one of three forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of accumulated contributions, the member's accrued benefit payable for 60 months, or 50 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime. If a member of the main system or National Guard retirement system dies in active service after normal retirement age, the benefit is the amount that would have been paid if the member had retired and had elected a 100 percent joint and survivor annuity. The surviving spouse of a deceased member of the judges' retirement system who had accumulated at least five years of service is entitled to elect one of two forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of accumulated contributions or 100 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime. If the deceased member was not vested, or if there is no surviving spouse, a death benefit equal to the member's accumulated contributions is paid in a lump sum.

In lieu of a monthly retirement benefit, terminating nonvested members and terminated vested members may elect to receive their accumulated member contributions with interest. Member contributions through June 30, 1981, accumulate with interest at five percent, member contributions from July 1, 1981, through June 30, 1986, accumulate with interest at six percent, and member contributions after June 30, 1986, accumulate with interest of .5 percent less than the assumed actuarial rate. The standard form of payment is a monthly benefit for life with a refund of the remaining balance, if any, of accumulated member contributions. Optional forms of payment are a 50 percent joint and survivor annuity; 100 percent joint and survivor annuity, with "popup" features; five-year certain and life annuity, 10-year certain and life annuity, or a level Social Security income annuity. Final average salary is the average of the highest salary received by the member for any 36 months employed during the last 120 months of employment.

Except for the employer contribution rate for the National Guard, contribution rates are specified by statute. The contribution rate for members of the main system is four percent, and the employer contribution is

4.12 percent. The contribution for the judges' retirement system is five percent and the employer contribution is 14.52 percent. The contribution rate for members of the National Guard retirement system is four percent, and the employer contribution is 8.33 percent. Part-time employees in the main system contribute 8.12 percent with no employer contributions. Effective January 1, 2000, a member's account balance includes vested employer contributions equal to the member's contributions to the deferred compensation program under NDCC Chapter 54-52.2. The vested employer contributions may not exceed \$25 or one percent of the member's salary, whichever is greater, for months one through twelve service credit; \$25 or two percent of the member's monthly salary, whichever is greater, for months 13 through 24 of service credit; \$25 or three percent of the member's monthly salary whichever is greater, for months 25 through 36 of service credit; and \$25 or four percent of the member's monthly salary whichever is greater, for service exceeding 36 months. The vested employer contributions may not exceed four percent of the member's monthly salary and are credited monthly to the member's account balance. The fund may accept rollovers from other qualified plans under rules adopted by the Retirement Board for the purchase of additional service credit. For many employees, no deduction is made from pay for the employee's share. This is a result of 1983 legislation that provided for a phased-in "pickup" of the employee contribution in lieu of a salary increase at that time.

In 1989 the Legislative Assembly established a retiree health insurance credit fund account with the Bank of North Dakota with 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 have accumulated at least 10 years of service. The employer contribution under the Public Employees Retirement System was reduced from 5.12 percent to 4.12 percent, under the judges' retirement system from 15.52 percent to 14.52 percent, and under the Highway Patrolmen's retirement system from 17.07 percent to 16.07 percent or one percent of the monthly salaries or wages of participating members, including participating Supreme Court and district court judges, and those moneys were redirected to the retiree health insurance credit fund.

The latest available report of the consulting actuary is dated July 1, 2000. According to the report on that date, the combined net assets of the Public Employees Retirement System and Highway Patrolmen's retirement system were \$1,236,180,055 at market value. This compares to \$1,144,019,039 a year earlier. The combined actuarial value of these funds was \$1,062,878,291. Of the combined valuation assets,

\$1,027,001,825 is allocated to the Public Employees Retirement System main system, including the judges' retirement system and the National Guard retirement system, and \$35,876,466 is allocated to the Highway Patrolmen's retirement fund. The actuarial value as a percent of market value is 85.98 percent. Total active membership was 16,375 (16,314 persons other than judges or members of the National Guard retirement system, 48 judges, and 13 members of the National Guard retirement system).

The report indicated that an employer contribution of 2.32 percent of payroll is necessary to meet the normal cost associated with nonjudge members. This means statutory contributions exceed the actuarial requirements of the Public Employees Retirement System, and the margin available in the main system is 1.80 percent of payroll.

The report for the judges' retirement system indicated that an employer contribution of 6.50 percent of payroll is required to fund the system. The statutory employer contribution rate is 14.52 percent of salary. This results in an actuarial margin of 8.02 percent of payroll.

The report of the National Guard retirement system indicated that an employer contribution of 1.74 percent of payroll is required to fund the system. The contribution rate set by the Retirement Board is 8.33 percent of salary. This results in an actuarial margin of 6.59 percent of salary.

Members of the Highway Patrolmen's retirement system are eligible for a normal service retirement at age 55 with at least 10 years of eligible employment or with age plus service equal to at least 80--the Rule of 80. The normal service retirement benefit is 3.40 percent of final average salary for the first 25 years of service and 1.75 percent for service in excess of 25 years. Members are eligible for an early service retirement at age 50 with 10 years of eligible employment. The early service retirement benefit is the normal service retirement benefit; however, a benefit that begins before age 55 or the Rule of 80, if earlier, is reduced by one-half of one percent for each month before age 55. Members are eligible for a disability benefit at six months of service and an inability to engage in substantial gainful activity. The disability benefit is 70 percent of the member's final average salary at disability less workers' compensation, with a minimum of \$100 per month. Members are eligible for deferred retirement benefits upon 10 years of eligible employment. The deferred retirement benefit is the normal service retirement benefit payable at age 55 or the Rule of 80, if earlier. Vested benefits are indexed at a rate set by the Retirement Board based upon the increase in final average salary from date of termination to benefit commencement date. Reduced early retirement benefits may be elected upon attainment of age 50.

Preretirement death benefits are available to a surviving spouse of a deceased member of the Highway Patrolmen's retirement system who had accumulated at

least 10 years of service in one of three forms--a lump sum payment of accumulated contributions, monthly payment of the member's accrued benefit for 60 months, or 50 percent of the member's accrued benefit, not reduced on account of age, for the spouse's lifetime. If the deceased member had accumulated less than 10 years of service or if there is no surviving spouse, then a death benefit equal to the member's accumulated contribution is paid in a lump sum.

The normal form of benefit for the Highway Patrolmen's retirement system is a monthly benefit for life with 50 percent of the benefit continuing for the life of the surviving spouse, if any. Optional forms of payment are a 100 percent joint and survivor annuity, five-year certain and life annuity, and ten-year certain and life annuity. The monthly benefit amount is adjusted under the optional forms of payment so the total value of benefits is actuarially equivalent. Final average salary is the highest salary received by the member for any 36 consecutive months employed during the last 120 months of employment and the member's contribution is 10.30 percent of monthly salary. The state contributes 16.70 percent of the monthly salary for each participating member.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement fund is dated July 1, 2000. According to the report, on that date the Highway Patrolmen's retirement fund had net assets with an actuarial value of \$35,876,466 and a market value of \$41,726,105. Total active membership was 122, and an employer contribution of 9.18 percent of payroll was necessary to meet the normal cost of the Highway Patrolmen's retirement fund. The statutory contribution rate is 16.70 percent of payroll. Thus, the actuarial margin is 7.52 percent of payroll.

The latest available report of the consulting actuary for the retiree health insurance credit fund is dated July 1, 2000. According to the report, on that date the fund had net assets with a market value of \$26,089,630 and an actuarial value of \$22,575,796. Thus, the actuarial value as a percentage of market value is 86.53 percent. Total active membership was 16,720 (6,733 men and 9,987 women). The statutory contribution rate is 1.00 percent of payroll. An employer contribution of 1.02 percent of payroll is required to fund the plan. This results in an actuarial margin of -.02 percent of payroll. The current benefit amount is \$4.50 times years of service.

The following is a summary of the proposals affecting the Public Employees Retirement System over which the

committee took jurisdiction and the committee's action on each proposal:

Public Employees Retirement System Main System Bill No. 71

Sponsor: Retirement Board

Proposal: Increases the benefit multiplier from 1.89 to 2.00 percent; establishes a procedure for determining a member's beneficiary; provides that if a participating member repurchases service the member did not elect to repurchase upon reemployment, the member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit or the amount the member received upon taking a refund of the member's account balance; allows members to purchase service credit with either pretax or after tax moneys; provides a postretirement adjustment of six percent of the present benefit; provides a prior service adjustment of six percent of the present benefit; provides that the Retirement Board may share retirement records as needed by an employer to validate the employer's compliance with existing state or federal laws, the Retirement and Investment Office, state or federal agencies, and interest groups approved by the board; allows the Public Employees Retirement System to administer more than one deferred compensation program; defines employee for purposes of the deferred compensation program as a person who is at least 18 years of age and employed in an approved and regularly funded position of unlimited duration for 20 hours or more per week and at least five months each year, including members of the Legislative Assembly; and repeals NDCC Section 54-52-17.9 relating to prior service retiree adjustments.

The committee amended the proposal at the request of the Retirement Board to change the purchase of service provisions from the actuarial cost to the fund of providing the credit or the amount the member received upon taking a refund of the member's account balance to the actuarial cost to the fund to provide the credit or the amount the member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund.

Actuarial Analysis: The reported actuarial cost impact of the proposal, as amended, is 3.67 percent of pay for the main system, 3.02 percent of pay for the National Guard retirement system, and .16 percent of pay for the judges' system.

The actuarial cost impact of the proposal, as amended, is summarized in the following tables:

Main System					
	(Amounts Shown in Millions)				
	Current Results	2% Benefit Multiplier	6% Ad-Hoc COLA	Early Retirement Reduction	Combined Changes
Actuarial accrued liability	\$879.2	\$910.6	\$897.0	\$882.7	\$932.2
Normal cost	\$34.0	\$35.5	\$34.0	\$34.1	\$35.7
Required contribution	\$9.4	\$13.1	\$10.6	\$9.8	\$14.8
As a percent of pay	2.32%	3.25%	2.63%	2.42%	3.67%

NOTE: The liability increases do not add due to the compounding of changes.

National Guard Retirement System				
	Current Results	2% Benefit Multiplier	6% Ad-Hoc COLA	Combined Plan Changes
Actuarial accrued liability	\$853,820	\$887,450	\$866,937	\$900,567
Normal cost	\$39,868	\$41,886	\$39,868	\$41,886
Required state contribution	\$7,225	\$11,590	\$8,140	\$12,505
As a percent of pay	1.74%	2.80%	1.96%	3.02%

Thus, if this bill is enacted, the remaining margin in the Public Employees Retirement System main system will be .45 percent ($1.80 - (3.67 - 2.32) = .45$), and the remaining margin in the National Guard retirement system will be 5.31 percent ($6.59 - (3.02 - 1.74) = 5.31$).

Committee Report: Favorable recommendation.

Bill No. 73

Sponsor: Retirement Board

Proposal: Provides that permanent and total disability for Supreme Court and district court judges is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment; provides that for Supreme Court and district court judges who do not elect a single life, joint and survivor, level Social Security, or life with 5-year or 10-year retirement

payment option, retirement benefits must be in the form of a lifetime monthly pension with 50 percent of the benefit continuing for the life of the surviving spouse, if any; provides that participants in the judges' retirement system are entitled to receive a two percent postretirement adjustment in their present monthly benefit beginning January 1, 2002, and again on January 1, 2003; and repeals NDCC Section 54-52-17.12, relating to postretirement adjustments for Supreme Court and district court judges.

The committee amended the bill at the request of the Retirement Board to clarify that the optional benefit forms must be an actuarially equivalent option.

Actuarial Analysis: The reported actuarial cost impact of the proposal, as amended, is 4.70 percent of pay. The following table summarizes the actuarial cost impact of the proposed changes:

	Current Results	50% J+S Normal Form	Eligibility for Disability Benefits	Ad-Hoc COLA	Combined Plan Changes
Actuarial accrued liability	\$11,845,335	\$12,877,882	\$11,698,937	\$11,982,443	\$12,868,592
Normal cost	\$761,961	\$852,025	\$783,439	\$761,961	\$874,346
Required contribution	\$258,847	\$423,912	\$569,691	\$268,806	\$445,558
As a percent of pay	6.50%	10.65%	6.78%	6.75%	11.20%

Thus, if this bill is enacted, the remaining margin in the judges' retirement system will be 3.32 percent ($8.02 - (11.20 - 6.50) = 3.32$).

Committee Report: Favorable recommendation.

Bill No. 88

Sponsor: Senator Elroy N. Lindaas

Proposal: Provides that payments for overtime must be included as wages and salaries for purposes of calculating benefits under the Public Employees Retirement System.

The committee amended this bill at the request of the sponsor to provide an appropriation of \$7,300 to the Retirement Board to administer its provisions.

Actuarial Analysis: The reported actuarial cost impact of the proposal is .18 percent of payroll for the

main system and .19 percent of payroll for the National Guard retirement system. The proposal would not affect the benefits paid under the retiree health insurance credit fund, but spreading the cost over the larger payroll will reduce the actuarial contribution requirement by .02 percent (from 1.02 percent to 1.00 percent).

Committee Report: No recommendation due to its uncertain impact on political subdivisions.

Bill No. 191

Sponsor: Retirement Board

Proposal: Establishes the Public Employees Retirement System retirement plans as both contributory and noncontributory retirement plans.

Actuarial Analysis: The consulting actuary reported that the proposed changes do not change the benefits or

the funding of the retirement plans and thus no actuarial cost impact would occur.

Committee Report: Favorable recommendation.

**Highway Patrolmen's Retirement System
Bill No. 74**

Sponsor: Retirement Board

Proposal: Allows contributors to the Highway Patrolmen's retirement system to purchase additional service credit from rollovers from other qualified plans, purchase additional credit for up to four years of active employment in the armed forces of the United States, purchase credit for employer-approved leaves of absence, and purchase additional years of service credit to enable the contributor to qualify for normal retirement; increases the benefit multiplier from 3.40 to 3.60 percent of final average salary for the first 25 years of service; provides a postretirement increase in the benefit multiplier from 3.40 to 3.60 percent of final average salary; provides an increase for individuals receiving disability retirement

benefits of six percent of the individual's present benefits; provides for the determination of beneficiaries under the Highway Patrolmen's retirement system; allows members of the Highway Patrolmen's retirement system to purchase service credit with either pretax or after tax moneys.

The committee amended the bill at the request of the Retirement Board to clarify that the purchase of service credit applies to both normal benefits and additional benefits.

Actuarial Analysis: The reported actuarial cost impact of the proposal is 3.98 percent of payroll. The statutory contribution rate is 16.70 percent of payroll, and the cost of the current plan is 9.18 percent of payroll. Thus, if the proposal is enacted, the remaining margin of the Highway Patrolmen's retirement system will be 3.54 percent ($16.70 - 9.18 = 7.52$; $7.52 - 3.98 = 3.54$).

The actuarial cost impact of the proposal is summarized in the following table:

	Current Results	Combined Changes	Benefit Multiplier	6% Ad-Hoc COLA
Actuarial accrued liability	\$34,034,236	\$35,928,926	\$35,004,632	\$34,958,530
Normal cost	\$1,019,503	\$1,072,219	\$1,072,219	\$1,019,503
Required contribution	\$427,514	\$612,461	\$547,954	\$492,021
As a percent of pay	9.18%	13.16%	11.77%	10.57%

Committee Report: Favorable recommendation.

**Defined Contribution Retirement Plan
Bill No. 50**

Sponsor: Representatives Francis J. Wald and Bette Grande

Proposal: Provides that all state employees except Supreme Court or district court judges or employees of the State Board of Higher Education and state institutions under the jurisdiction of the board who are eligible to participate in TIAA-CREF may elect to become members of the defined contribution retirement plan.

Actuarial Analysis: Concerning the impact of this proposal on the defined benefit plan, the consulting actuary concluded that a guaranteed cost-of-living adjustment for the defined benefit plan cannot be adopted by either 2005 or 2007, without higher investment return or additional contributions or other changes or gains; that based on assumptions and methods, the defined benefit plan is not harmed by the optional defined contribution program; that expansion of the optional program to political subdivisions helps, not hurts, the defined benefit plan; that diversion of some members to the defined contribution program allows a guaranteed cost-of-living adjustment to be paid out of overfunding as the overfunding goes further when spread over fewer defined benefit members; and that external cash flow may become an issue in 15 to 20 years but will not force significant changes to allocation or assumed investment return. However, the actuarial consultant identified several administration issues

and recommended delaying the implementation date of the expanded plan to January 1, 2003; moving the eligibility date to September 30 and allowing all employees after that date the normal six months to make a decision; moving the end of the election window to December 15; excluding existing nonclassified employees who had an opportunity to choose the defined contribution plan under prior legislation from the provisions of the bill; and considering an alternative methodology to allocate administrative expenses. One such methodology identified by the consulting actuary would be to pay administrative costs out of contributions instead of account assets. As an example, pursuant to this methodology the employer contribution would remain at 4.12 percent but .12 percent would be deposited into an administrative account, and the remaining 4.00 percent would go to the employee's account. This methodology would distribute administrative costs to all members.

Committee Report: Favorable recommendation.

Bill No. 51

Sponsor: Representatives Francis J. Wald and Bette Grande

Proposal: Extends the time period within which state employees eligible to participate in the defined contribution retirement plan may elect to participate in the plan until December 31, 2001.

Actuarial Analysis: The consulting actuary reported that because approximately 200 people elected to participate in the optional defined contribution plan during the original window period and the actuarial

impact to the plan was minimal that it anticipated the impact of this bill to be minimal as well.

Committee Report: Favorable recommendation.

Bill No. 72

Sponsor: Retirement Board

Proposal: Provides that eligible employees may elect to participate in the defined contribution retirement plan on the date the employee is first notified of eligibility as well as at any time during the first six months after the date of employment, whichever is later; provides that deferred members who are reemployed have six months after the date of reemployment or the date the employee is first notified of eligibility, whichever is later, rather than 60 days, to elect to participate in the defined contribution retirement plan; provides that participants who become employed by a political subdivision that participates in the Public Employees Retirement System must remain in the defined contribution retirement plan, but participants who become employees of the judicial branch, the State Board of Higher Education, a state institution under the jurisdiction of the State Board of Higher Education, Highway Patrol, or in a position subject to Teachers' Fund for Retirement membership must become a new member of the retirement plan for which that member's new position is eligible; allows participating members to roll over funds from other qualified plans into the member's account; allows distribution of the participating member's vested account balance if the board determines the participating member has become totally and permanently disabled.

The committee amended the proposal at the request of the Retirement Board to change the election provisions to allow the board, in its sole discretion, to determine whether an employee was adequately notified of the employee's option to participate in the defined contribution retirement plan, and if not, to provide the employee a reasonable time within which to make the election, which may extend beyond the original six-month election window; revise participation requirements to provide that if an employee elected to participate in the defined contribution retirement plan but becomes employed by a political subdivision, that employee continues to participate in the defined contribution retirement plan and to clarify that an employee who moved from a nonclassified position in which the employee selected the defined contribution retirement plan to the Supreme Court or State Board of Higher Education, the employee would maintain the employee's membership in the defined contribution retirement plan rather than being required to switch to the defined benefit plan; and add a provision to allow direct rollovers from other Internal Revenue Code Section 401 plans.

Actuarial Analysis: The actuarial consultant reported that the bill would have no actuarial cost impact on the Public Employees Retirement System.

Committee Report: Favorable recommendation.

Retiree Health Insurance Fund

Bill No. 77

Sponsor: Retirement Board

Proposal: Increases the retiree health credit from \$4.50 to \$5.

Actuarial Analysis: The reported actuarial cost impact of the proposal is .14 percent of payroll. The actuarial cost impact of the proposal is summarized in the following table:

	Current Results	Proposed Plan Change
Actuarial accrued liability	\$61,901,039	\$68,778,931
Normal cost	\$2,037,196	\$2,263,552
Required contribution	\$4,211,825	\$4,807,150
As a percent of pay	1.02%	1.16%

Thus, if this bill is enacted, the remaining margin in the retiree health insurance credit fund will be -.16 percent ($-.02 - .14 = -.16$).

Committee Report: No recommendation.

Uniform Group Insurance Program

Bill No. 2

Sponsor: Senator John Andrist

Proposal: Provides that eligible employees who are eligible to participate in the uniform group insurance program at the family plan rate who have medical and hospital benefits coverage under a health insurance plan provided to another member of the eligible employee's family who is not insured under the uniform group insurance program and the eligible employee does not enroll in the uniform group insurance program are entitled to receive a monthly payment equal to 60 percent of the family plan rate; provides that if eligible employees who are eligible to participate in the uniform group insurance program at the family plan rate elect to participate at the single plan rate and forego family coverage, the eligible employee is entitled to receive a monthly payment equal to one-half of the difference between the family plan rate and the single plan rate provided no member of the eligible employee's family is insured under the uniform group insurance program.

Actuarial Analysis: The consulting actuary reported that this proposal would likely subject the Public Employees Retirement System plan to adverse selection and an increase in premiums. This occurs because those employees who elect to leave the plan would likely have fewer claims than average, because they use the plan less due to their health status. Because the entire premium that those who waive would pay is removed as revenue, the remainder of the claims would be spread over a smaller population. The adverse selection issue will vary depending on the individual employee's situation and current coverage election.

The consulting actuary noted that it is important to recognize that, generally speaking, 20 percent of the covered participants incur 80 percent of the claims. In fact, for the Public Employees Retirement System plan,

about five percent of the participants do not incur any claims at all in any given year. It is also reasonable to assume that individuals electing to opt out of coverage will incur fewer claims than average. Each time an individual opts out, the entire premium revenue is removed from the pool as well as the covered expenses. If the expenses for that individual are less than the premium, the net remainder must be spread across the remainder of the pool, thereby incrementally raising the needed premium per contract. The consulting actuary illustrated this concept using claim costs for participant A of \$150, participant B of \$100, participant C of \$50, participant D at \$0 for a total of \$300 and an average of \$75. Thus, the plan has a total cost of \$300 and an average of \$75 for all participants. If participants are asked to pay the average rate of \$75, participant D is the most likely candidate to drop out of the plan. If this occurs the total cost stays at \$300 but the average cost increases from \$75 to \$100. At this stage, participant C is now the most likely candidate to decide not to participate. If this occurs, the total cost of the plan will reduce from \$300 to \$250 but the average cost will increase from \$100 to \$125. The actuarial term for this occurrence is an assessment spiral. Contributory plans that charge the same rate to participants with widely varying levels of risk are particularly vulnerable to assessment spiral.

Committee Report: Unfavorable recommendation because of the potential for increased costs due to adverse selection and assessment spiral.

Bill No. 49

Sponsor: Senator Tim Mathern

Proposal: Allows any person who is without health insurance coverage to participate in the uniform group insurance program subject to minimum requirements established by the Retirement Board.

The committee amended the bill at the request of the sponsor to make the provisions governing individual coverage contingent on the Retirement Board being able to underwrite the coverage; include a provision allowing the use of risk-adjusted premiums for private sector employers; and provide that the bill becomes effective when the Retirement Board receives notification from the federal government of the uniform group insurance program's exempt status under the Employee Retirement Income Security Act to allow for the expansion of the uniform group insurance program, the Retirement Board determines that utilizing medical underwriting requirements and risk-adjusted premiums do not violate the Health Insurance Portability and Accountability Act, and the Retirement Board enters a contract with an insurer to provide coverage pursuant to the Act.

Actuarial Analysis: The consulting actuary reported that the expansion of the Public Employees Retirement System plan could potentially create increased purchasing power through a larger group. However, it is not clear that the Public Employees Retirement System

plan would be able to negotiate an arrangement to provide any significant cost-savings over the current cost structure in the arrangement with Blue Cross Blue Shield of North Dakota. The consulting actuary noted that adverse risk selection is an issue that must be considered when changing eligibility requirements. Adverse risk selection results when individuals or employer groups choose to participate in a plan based upon the knowledge that their individual or group claims will be high. These claims are generally higher than that of the average covered Public Employee Retirement System population. The adverse selection is further fueled when individuals or groups can enter and depart from the plan. However, the consulting actuary noted that the proposed bill provides for a number of safeguards against adverse risk selection, including minimum requirements established by the Retirement Board, a minimum participation period of 60 months for private sector employer groups, and the belief that the Health Insurance Portability and Accountability Act would not apply to the expanded program. In summary, the consulting actuary said because of the use of medical underwriting and risk-adjusted premiums the cost should be neutral.

Committee Report: Unfavorable recommendation.

Bill No. 75

Sponsor: Retirement Board

Proposal: Transfers from NDCC Section 54-52.1-06 to Section 54-52-04 authority of the Retirement Board to use amounts credited to the separate uniform group insurance program fund in excess of the costs of the administration of the uniform group insurance program to reduce the amount of premium amounts paid monthly by enrolled members of the uniform group insurance program, to reduce increases in premium amounts paid monthly by enrolled members, or to provide increased insurance coverage to members, as determined by the board; provides that retirees who have accepted a periodic distribution from the defined contribution retirement plan are eligible for retiree health benefits; provides that premium payment amount and history for any available insurance coverage are confidential, but the Retirement Board may disclose certain information and records to persons or entities to which the board is required to disclose information pursuant to federal statutes or rules.

The committee amended the bill at the request of the Retirement Board to require the executive director of the Public Employees Retirement System to transfer \$475,000 from the public employees life insurance program fund to the uniform group health insurance program fund for the purpose of increasing the health insurance reserve.

Actuarial Analysis: The consulting actuary reported that the proposal will have no actuarial impact on the uniform group health insurance program.

Committee Report: Favorable recommendation. The committee noted that the money transferred from

the public employee life insurance program fund to the uniform group health insurance program fund for the purpose of increasing the health insurance reserve is public employee money.

Bill No. 76

Sponsor: Retirement Board

Proposal: Requires the Retirement Board to establish a dental plan for eligible employees and retirees by July 1, 2002.

Actuarial Analysis: The reported actuarial cost impact of the proposal is \$2.6 to \$3.0 million per biennium.

Committee Report: Unfavorable recommendation.

Bill No. 213

Sponsor: Senator Tim Mathern

Proposal: Allows nonprofit corporations organized for the purpose of providing residential services for developmentally disabled, chronically mentally ill, and physically disabled persons to participate in the uniform group insurance program subject to minimum requirements established by the Retirement Board.

Actuarial Analysis: The consulting actuary reported that the main financial impact concerns that of adverse selection. If employees of residential services organizations that elect coverage are more ill or utilize more services than the existing uniform group insurance enrollees, the overall premium costs for the program will increase.

Committee Report: No recommendation.

Other Retirement Plans and Proposals

The committee considered several proposals dealing with changes to other retirement plans, including the Old-Age and Survivor Insurance System and alternate firefighters relief association plans.

Old-Age and Survivor Insurance System (OASIS)

Bill No. 78

Sponsor: Job Service North Dakota

Proposal: Increase of primary insurance benefits under the Old-Age and Survivor Insurance System Fund by \$26.66 per month, an increase of \$20 per month for beneficiaries.

Actuarial Analysis: Job Service North Dakota reported the fund has sufficient assets to pay for the proposed increase and similar future increases through the end of the program.

Committee Report: Favorable recommendation.

Alternate Firefighters Relief Association Plans

Bill No. 79

Sponsors: Senators Tony Grindberg and Carolyn Nelson and Representative Kathy Hawken

Proposal: Provides that a firefighters relief association may adopt an alternate pension plan for its members with a service benefit of 2.5 percent of final salary with final salary for a first-class firefighter being the final salary at the time of the member's retirement and final salary for officers or members of higher rank being the average salary for the last five years of employment; and provides a postretirement adjustment of two percent of the member's present benefits.

The committee amended the bill at the request of the sponsor to include a disability benefit and replace the postretirement adjustment of two percent of the member's present benefit with a 13th check.

Actuarial Analysis: The actuarial consultant reported that the cost of the increase in the benefit multiplier from 2.33 percent to 2.50 percent and the change in the definition of final average salary would increase the annual cost to the percent of payroll 2.72 percent, the 13th check would cost .11 percent, for a total change of 2.83 percent. The actuarial funding margin for the year 2000 actuarial valuation for the Fargo Firefighters Relief Association is preliminarily projected to be between 3.55 percent and 4.55 percent of payroll. Thus, the amount by which actual contributions will exceed required contributions appears to exceed the cost of these improvements by .72 percent to 1.72 percent of covered payroll. Although the actuarial consultant had not yet determined the cost impact for the disability benefit change, the actuarial consultant reported that the change will produce a cost-savings to the plan because disability pensions occurring in the first five years of membership will be reduced.

Committee Report: Favorable recommendation.

APPROVAL OF PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD TERMINOLOGY TO COMPLY WITH FEDERAL REQUIREMENTS AND NOTIFICATION OF IMPLEMENTATION OF ALTERNATE SCHEDULE OF BENEFITS BY FIREFIGHTERS RELIEF ASSOCIATION

The committee received a report from representatives of the Public Employees Retirement System Board that no action on the part of the committee was required pursuant to NDCC Section 54-52.1-08.2, which requires the committee to approve terminology adopted by the Retirement Board to comply with federal requirements. The committee was not notified by any firefighters relief association pursuant to Section 18-11-15(5) that requires the Employee Benefits Programs Committee to be notified by a firefighters relief association if it implements an alternate schedule of monthly service pension benefits for members of the association.

DEFINED CONTRIBUTION RETIREMENT PLAN AND DEFERRED COMPENSATION PROGRAM VENDORS STUDY

Section 2 of 1999 Senate Bill No. 2025, the appropriations bill for the Retirement and Investment Office and the Public Employees Retirement System, provides for a Legislative Council study of defined contribution retirement plan and deferred compensation program vendors.

Defined Contribution Retirement Plan

House Bill No. 1257 (1999) established a defined contribution retirement plan for nonclassified state employees. North Dakota Century Code Section 54-52.6-04 provides that the Public Employees Retirement System Board is to administer the defined contribution retirement plan, and the board or vendors contracted for by the board shall invest the assets of the plan. Section 54-52.6-05 provides that each participating member directs the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board.

Deferred Compensation Program

North Dakota Century Code Chapter 54-52.2 governs deferred compensation plans for public employees. Section 54-52.2-03 provides that the "administration of the deferred compensation program for each state agency, department, board, commission, or institution is under the direction of the public employees retirement board . . . and (the board) shall administer the deferred compensation program based on a plan in compliance with the appropriate provisions of the Internal Revenue Code and regulations adopted under those provisions." Section 54-52.2-03.2 outlines the authority of the Public Employees Retirement System concerning the deferred compensation program. This section provides that:

1. The board shall adopt rules necessary to implement this chapter and to manage the deferred compensation plan subject to the limitations of this chapter.
2. The board shall do all things necessary to preserve the tax-exempt status of the plan.
3. All providers must be authorized to do business in this state and all agents of providers must be licensed by the appropriate licensing authority or authorities in this state.
4. To continue to participate in the program, each provider must report annually, in a form and manner specified by the board, information related to their products, administrative and management fees, contract and maintenance charges, withdrawal penalties, market rating, and such other information the board may require.

5. The board may suspend participation of any provider that does not meet the requirements of this chapter or the rules adopted by the board.
6. The board has the authority to establish a deferred compensation advisory committee which shall include active providers who have signed a provider administrative agreement with the state of North Dakota deferred compensation plan.

Concerning the selection of vendors under the deferred compensation program, the Public Employees Retirement System Board has adopted a policy that a vendor must have 50 participants to be an approved vendor.

Testimony

The committee received testimony from representatives of the Public Employees Retirement System that there are 2,955 active and retired participants in the deferred compensation program, of which 2,197 are active and 758 are retired. There are 19 deferred compensation providers. The deferred compensation program is holding \$71,158,177 in assets.

The Public Employees Retirement System Board has established a companion plan for the deferred compensation program which consists solely of mutual funds and is selected on a competitive bid basis. The committee received testimony that one of the problems in attracting a bidder for the companion plan was the fact that the Retirement Board could not offer any funds to the successful bidder and that entity had to build the companion plan from zero. If all the assets public employees hold in the state's deferred compensation program had been available to a single provider, that provider could provide the administration and record-keeping for the deferred compensation plan for 60 basis points as opposed to the 90 basis points that the current provider is charging. The committee received testimony that restricting or limiting participation in the deferred compensation program to one vendor who would be selected through a bidding process by the board would be opposed by existing providers and brokers and might be opposed by participants who had developed a relationship with a local broker if that broker's company were not the successful bidder. Also, many deferred compensation assets are held in annuities that may have an exit fee if a participant were required to transfer the assets to the successful bidder.

The committee received testimony from representatives of Aetna that if the Retirement Board could bid the deferred compensation program similar to the 401(a) defined contribution plan, it would result in lower costs to employees, increased education for participants, higher participation, and increased employee satisfaction.

The committee received testimony from representatives of Fidelity Investments Public Sector Services

Company that many plan sponsors are moving to a semibundled approach, and that if participants can look to one provider for education, it improves education, asset allocation, and returns for participants. The committee received testimony that if all deferred compensation assets are bundled together and made available to one provider, it would lead to reduced fees for participants with more of the participants' dollars being invested in their retirement accounts which would lead to a greater amount of money being available to participants at retirement.

The committee received testimony from representatives of Investment Centers of America, VALIC, Waddell & Reed Financial Services, American Express Advisors, AXA Advisors/Equitable, Great West Life, and Aetna that the current situation with multiple vendors is working

very well and provides state employees with a choice of deferred compensation vendors.

The committee also monitored the implementation of the defined contribution retirement plan. The committee received testimony from representatives of Fidelity Investments Public Sector Services Company concerning implementation of the defined contribution retirement plan, the investment education provided by Fidelity, participant and plan sponsor services provided by Fidelity, and investment options available under the defined contribution retirement plan.

Conclusion

The committee makes no recommendation concerning the study of defined contribution retirement plan and deferred compensation program vendors.

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 Legislative Assembly enacted North Dakota Century Code (NDCC) Section 54-35-02.7, which statutorily created the committee. The committee is responsible for legislative overview of the Garrison Diversion Unit Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Under NDCC Section 54-35-02.7, the committee consists of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, the chairmen of the House and Senate standing Committees on Natural Resources, and the chairmen of the House and Senate standing Committees on Agriculture.

In addition to its statutory responsibilities, the Legislative Council assigned to the committee Senate Concurrent Resolution No. 4027, which directed a study of issues related to the Missouri River in North Dakota, and the duties to receive a report from the State Engineer on its study of the feasibility and desirability of constructing dams and other impoundments in the Pembina River watershed for the purpose of reducing flows in the lower reaches of the Pembina River and to receive periodic reports from the State Engineer regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance and sources for repayment of bonds to finance construction of flood control projects, the Southwest Pipeline Project, a Devils Lake outlet, and a statewide water development program during the 1999-2000 interim.

Committee members were Representatives John Dorso (Chairman), Merle Boucher, Mick Grosz, Pam Gulleson, David Monson, Eugene Nicholas, and Francis J. Wald and Senators Layton Freborg, Joel C. Heitkamp, Aaron Krauter, Gary J. Nelson, Rod St. Aubyn (until his resignation from the Legislative Assembly on August 30, 2000), John T. Traynor, and Terry M. Wanzek.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

HISTORY OF THE PROJECT

Pick-Sloan Plan

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the federal Flood Control Act of 1944 [Pub. L. 78-534;

57 Stat. 887]. The Pick-Sloan plan provided for construction of a series of dams on the Missouri River to control flooding, provide power generation, and maintain a dependable water supply for irrigation, municipalities, industry, recreation, wildlife habitat, and navigation. Approximately 550,000 acres of land in the state were inundated by reservoirs on the Missouri River under the Pick-Sloan plan.

One feature of the Pick-Sloan plan was the Missouri-Souris Unit, which was the forerunner of the Garrison Diversion Unit. Under the plan for the Missouri-Souris Unit, water was to be diverted below the Fort Peck Dam in Montana and transported by canal for irrigating 1,275,000 acres; supplying municipalities in North Dakota, South Dakota, and Minnesota; restoring Devils Lake; conserving wildlife; and augmenting the Red River. The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). After considerable study and review of the Missouri-Souris Unit, Congress reauthorized the project as the initial stage, Garrison Diversion Unit, in August 1965 [Pub. L. 89-108; 83 Stat. 852].

Garrison Diversion Unit

The first detailed investigations of the Garrison Diversion Unit were completed in 1957 and involved a proposed development of 1,007,000 acres. The initial stage of the Garrison Diversion Unit provided for irrigation service to 250,000 acres in the state. This plan involved the construction of major supply works to transfer water from the Missouri River to the Souris, James, and Sheyenne Rivers and the Devils Lake Basin. The plan also anticipated water service to 14 cities, provided for several recreation areas, and provided for a 146,530-acre wildlife plan to mitigate wildlife habitat losses resulting from project construction and to enhance other wetland and waterfowl production areas.

Under the 1965 authorization, the Snake Creek Pumping Plant would lift Missouri River water from Lake Sakakawea into Lake Audubon, an impoundment adjacent to Lake Sakakawea. From Lake Audubon the water would flow by gravity through the 73.6-mile McClusky Canal into Lonetree Reservoir, situated on the headwaters of the Sheyenne River. The Lonetree Reservoir would be created by construction of Lonetree Dam on the upper Sheyenne River, Wintering Dam on the headwaters of the Wintering River, and the James River dikes on the headwaters of the James River. Lonetree Reservoir would be situated so that water could be diverted by gravity into the Souris, Red, and James River Basins and the Devils Lake Basin.

The Velva Canal would convey project water from the Lonetree Reservoir to irrigate two areas totaling approximately 116,000 acres. The New Rockford Canal would convey project water for irrigation of approximately

21,000 acres near New Rockford and to deliver water into the James River Feeder Canal for use in the Oakes-LaMoure area. The Warwick Canal, an extension of the New Rockford Canal, would provide water for irrigation in the Warwick-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 slowed or halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Unit would allow transfer of foreign species of fish and other biota to the detriment of Canadian waters in violation of the Boundary Waters Treaty of 1909.
2. Numerous problems concerning wildlife mitigation and enhancement lands.
3. Legal suits brought by groups, such as the National Audubon Society, seeking to halt construction of the Garrison Diversion Unit by claiming the project violates the National Environmental Policy Act and to enforce a stipulation between the United States and the Audubon Society to suspend construction until Congress reauthorizes the Garrison Diversion Unit.

Canadian Concerns

Canadian interest in the Garrison Diversion Unit has centered on concerns that because the Garrison Diversion Unit involves a transfer of water from the Missouri River to the drainage basins of the Souris and Red Rivers, the return flows entering Canada through the Souris and Red Rivers would cause problems with regard to water quality and quantity.

In 1973 the Canadian government requested a moratorium on all further construction of the Garrison Diversion Unit until a mutually acceptable solution for the protection of Canadian interests under the Boundary Waters Treaty of 1909 was achieved. The United States government responded by stating its recognition of its obligations under the Boundary Waters Treaty and by adopting a policy that no construction affecting Canada would be undertaken until it was clear these obligations would be met.

During 1974 several binational meetings of officials were held to discuss and clarify Canadian concerns over potential degradation of water quality. An agreement was reached in 1975 between the governments of Canada and the United States to refer to the International Joint Commission the matter of potential pollution of boundary waters by the Garrison Diversion Unit.

The International Joint Commission created the International Garrison Diversion Study Board. The board

concluded that the Garrison Diversion Unit would have adverse impacts on water uses in Canada, including adverse effects on flooding and water quality. The board recommended that any direct transfer by the Garrison Diversion Unit of fish, fish eggs, fish larvae, and fish parasites be eliminated by adopting a closed system concept and the installation and use of a fish screen structure.

In August 1984 representatives of Canada and the United States announced a general agreement between the two governments that Phase I of the initial stage of the Garrison Diversion Unit could be constructed. Canada, however, remained firmly opposed to the construction of any features that could affect waters flowing into Canada.

Garrison Diversion Unit Commission

The water and energy appropriations bill signed on July 16, 1984, contained an agreement to establish a commission to review the Garrison Diversion Unit. The Secretary of the Interior appointed a 12-member Garrison Diversion Unit Commission to review the Garrison Diversion Unit in North Dakota. The commission was directed to examine, review, evaluate, and make recommendations regarding the existing water needs of the state and to propose modifications to the Garrison Diversion Unit before December 31, 1984. Construction on the project was suspended from October 1 through December 31, 1984.

The commission worked under the restriction that any recommendation of the commission had to be approved by at least eight of the 12 members and that should the commission fail to make recommendations as required by law, the Secretary of the Interior was authorized to proceed with construction of the Garrison Diversion Unit as designed.

Congress directed the commission to consider 11 specific areas:

1. The costs and benefits to North Dakota as a result of the Pick-Sloan Missouri Basin program.
2. The possibility for North Dakota to use Missouri River water.
3. The need to construct additional facilities to use Missouri River water.
4. Municipal and industrial water needs and the possibility for development, including quality of water and related problems.
5. The possibility of recharging ground water systems for cities and industries, as well as for irrigation.
6. The current North Dakota water plan to see if parts of the plan should be recommended for federal funding.
7. Whether the Garrison Diversion Unit can be redesigned and reformulated.

8. The institutional and tax equity issues as they relate to the authorized project and alternative proposals.
9. The financial and economic impacts of the Garrison Diversion Unit, when compared with alternative proposals for irrigation and municipal and industrial water supply.
10. The environmental impacts of water development alternatives, compared with those of the Garrison Diversion Unit.
11. The international impacts of the water development alternatives, compared with those of the Garrison Diversion Unit.

The commission released its final report and recommendations on December 20, 1984. The commission affirmed the existence of a federal obligation to the state for its contribution to the Pick-Sloan Missouri Basin program but recommended that an alternative plan be implemented in place of the 250,000-acre initial stage of the Garrison Diversion Unit. The commission recommended that the Sykeston Canal be constructed as the functional replacement for the Lonetree Dam. While the Lonetree Dam and Reservoir would remain an authorized feature of the plan, construction of that dam would be deferred pending appropriation of funds by Congress and a determination by the Secretary of the Interior that consultations with Canada were satisfactorily concluded. The commission recommended that the Garrison Diversion Unit be configured to provide irrigation service to 130,940 acres in the Missouri and James River Basins instead of the initial stage 250,000-acre project. The commission also recommended that the first phase of the Glover Reservoir be included as a feature of the plan in lieu of Taayer Reservoir for regulation of flows in the James River.

The commission further recommended the establishment of a municipal, rural, and industrial system for treatment and delivery of quality water to approximately 130 communities in North Dakota. A municipal and industrial water treatment plant with a capacity of 130 cubic feet per second was recommended to provide filtration and disinfection of water releases to the Sheyenne River for use in the Fargo and Grand Forks areas.

An alternate state plan for municipal water development was submitted to the Garrison Diversion Unit Commission by then Governor Allen I. Olson and Governor-elect George Sinner proposing that the state would design and construct the water systems and pay 25 percent of their costs. In return, the federal government would provide up to \$200 million in nonreimbursable funds for municipal water development projects. The federal government would pay 75 percent of the construction costs of the systems with only the operation and maintenance costs borne by the cities benefited.

Garrison Diversion Unit Reformulation

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 433]. This legislation was supported by representatives of the state, the Garrison Diversion Conservancy District, the National Audubon Society, and the National Wildlife Federation.

The legislation addressed the James River by directing a comprehensive study of effects over the next two years during which time construction of the James River Feeder Canal, the Sykeston Canal, and any James River improvements could not be undertaken. Of the 32,000-acre New Rockford Extension included in the Garrison Diversion Unit Commission final report, 4,000 acres were transferred to the West Oakes area and 28,000 acres were authorized for development within the Missouri River Basin.

The legislation also provided for:

1. 130,940 acres of irrigation.
2. Deauthorization of the 1944 Flood Control Act and the 1965 Garrison authorization.
3. Preservation of the state's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed before enactment which will no longer be employed to full capacity, to the extent of the unused capacity.
5. Acre-for-acre mitigation based on ecological equivalency rather than the 1982 mitigation plan.
6. Deauthorization of the Taayer Reservoir and purchase of the Kraft Slough for waterfowl habitat.
7. Continued authorization, but no construction, of the Lonetree Reservoir. The Sykeston Canal was mandated for construction following required engineering, operational, biological, and economic studies. The Lonetree Reservoir could be built if:
 - a. The Secretary of the Interior determines a need for the dam and reservoir;
 - b. Consultations with Canada are satisfactorily completed; and
 - c. The Secretary of State and the Secretary of 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 was authorized to deliver 100 cubic feet per second of water to Fargo and Grand Forks. All water entering the Hudson Bay

drainage system must be treated and must comply with the Boundary Waters Treaty of 1909.

10. Municipal and industrial water delivery systems for the Fort Berthold, Fort Totten, and Standing Rock Reservations.
11. Irrigation soil surveys that must include investigations for toxic or hazardous elements.
12. Federal participation in a wetlands trust to preserve, enhance, restore, and manage wetland habitat in North Dakota.

Garrison Municipal, Rural, and Industrial Water Supply Program

Included within the Garrison Diversion Unit Reformulation Act of 1986 is an authorization enabling Congress to appropriate \$200 million for the Garrison municipal, rural, and industrial water supply program. These funds are for the planning and construction of water supply facilities for municipal, rural, and industrial use throughout the state.

On July 18, 1986, the Garrison Diversion Conservancy District and the State Water Commission entered an agreement for the joint exercise of governmental powers. The agreement allows the district to use the expertise of the commission in developing and implementing the water supply program. In addition, the district was to enter an agreement with the Secretary of the Interior which designates the district as the fiscal agent for the state concerning moneys received and payments made to the United States for the water supply program.

On November 19, 1986, the United States and the Garrison Diversion Conservancy District entered an agreement that designates the district to act on behalf of the state in the planning and construction, as well as the operation and maintenance, of the water systems constructed pursuant to the Garrison Diversion Reformulation Act of 1986. The agreement defines the responsibilities of the United States and the district under the agreement and contains provisions concerning the work to be undertaken by the district, stipulations concerning the transfer of funds, and the procedure for reporting, accounting, and reviewing the planning and construction programs. The agreement also provides that the Southwest Pipeline Project is eligible to receive funding under this program.

PROJECT UPDATE

The committee received updates concerning the Garrison Diversion Unit Project from representatives of the Garrison Diversion Conservancy District, the State Water Commission, and the United States Bureau of Reclamation.

Appropriations

Since 1966 Congress has expended \$632,358,000 for the Garrison Diversion Unit Project, with \$379,143,000 expended since enactment of the Garrison Diversion Unit Reformulation Act of 1986. The budget request for fiscal year 2001 was \$17,416,000 in federal funds and \$175,000 in nonfederal funds for a total of \$17,591,000. The total estimated cost of the project is \$1,531,449,000 for which \$632,670,000 has been authorized through fiscal year 2000.

Since inception through September 30, 1999, \$236,345,000 has been expended on Garrison Diversion Unit supply systems and operation, maintenance, and replacement of those systems; \$48,668,000 on the Oakes Test Area; \$25,824,000 on other non-Indian irrigation features; \$2,966,000 for Indian irrigation features; \$5,774,000 for the Jamestown Dam; \$13,062,000 for the Audubon Refuge; \$7,075,000 for the Arrowwood Refuge; \$3,756,000 for the James River environmental impact statement and report; \$155,136,000 for the state municipal, rural, and industrial water supply program; \$637,000 for the Sheyenne River release program; \$26,894,000 for Indian municipal, rural, and industrial water supply projects; \$5,743,000 for recreation features; \$12 million for the wetlands trust; \$50,475,000 for the Lonetree Dam feature; \$1,003,000 for the Kraft Slough Refuge feature; and \$37,001,000 for off-refuge mitigation and enhancements.

The executive budget for fiscal year 2001 contains \$5,291,000 for supply systems and operation and maintenance of those systems, \$2,400,000 for Indian irrigation features, and \$6,676,000 for the state municipal, rural, and industrial water supply program. The executive budget for fiscal year 2001 also contains \$474,000 for the Audubon Refuge feature, \$945,000 for the Arrowwood Refuge feature, \$150,000 for the Kraft Slough Refuge feature, \$630,000 for operations and maintenance of wildlife features and stream gauging, \$680,000 for the Lonetree Wildlife Management area, and \$70,000 for scattered tracks and canal-side lands. The executive budget for fiscal year 2001 also contains \$100,000 for recreation facilities.

Garrison Municipal, Rural, and Industrial Water Supply Program

The Garrison municipal, rural, and industrial water supply program has an appropriation authorization of \$200 million in federal grant funds for the planning and construction of water supply facilities for municipal, rural, and industrial use throughout the state. The state has received \$165 million in federal grant funds through fiscal year 2000. Projects funded under the municipal, rural, and industrial water supply program are funded using 65 percent federal grant moneys and 35 percent nonfederal moneys. The operation, maintenance, and replacement costs for water systems are 100 percent nonfederal costs. To date, 35 projects serving

approximately 200,000 people have been completed at a cost of \$233 million. The following table contains a summary of the total costs and federal expenditures since 1986:

Summary of Costs and Federal Expenditures for the Municipal, Rural, and Industrial Water Supply Program		
Feature	Total Costs	Municipal, Rural, and Industrial Water Supply Program Federal Funding
Northwest Area Water Supply Project	\$5,500,000	\$3,700,000
Southwest Pipeline Project	115,300,000	69,700,000
Other municipal, rural, and industrial water supply projects and administration	112,200,000	91,600,000
Total	\$233,000,000	\$165,000,000

The current \$200 million authorization has an estimated balance of \$35 million. Of this total, \$24.4 million is allocated to the Northwest Area Water Supply Project. The following table contains a summary of the costs for the projects, federal funding, and the nonfederal funding for the Garrison municipal, rural, and industrial water supply program:

Summary of Garrison Municipal, Rural, and Industrial Water Supply Program Costs			
	Estimated Total Project Costs	Municipal, Rural, and Industrial Program Federal Funding	Municipal, Rural, and Industrial Program Nonfederal Funding
Expended to date	\$233,000,000	\$165,000,000	\$68,000,000
Current authorization balance	53,846,154	35,000,000	18,846,154
Total	\$286,846,154	\$200,000,000	\$86,846,154

Southwest Pipeline Project

Senate Bill No. 2188, enacted by the 56th Legislative Assembly, authorized the State Water Commission to issue bonds in an amount of \$4.5 million for construction of Southwest Pipeline features during the 1999-2001 biennium. As a result, construction on the Mott-Elgin phase of the Southwest Pipeline Project was commenced in 1999. The funds provided by Senate Bill No. 2188 will be matched with \$1.9 million in loans and \$5.1 million in grants from the United States Department of Agriculture Rural Development Agency for the Mott-Elgin phase for the Southwest Pipeline Project.

Representatives of the State Water Commission reported that contracts for the main transmission pipeline and the Hebron Reservoir were awarded in September 1999 and for the Burt Reservoir in October 1999. The main transmission pipeline is 46.5 miles long and extends from Mott to New Leipzig, Elgin, and Carson. The pipeline from Mott to New Leipzig and Elgin has

passed tests for leaks and bacteriological contamination, and service was scheduled to begin to Elgin on October 1, 2000, to Carson by mid-October 2000, and to New Leipzig on November 1, 2000. Also, the 500,000 gallon Hebron Reservoir and the 400,000 gallon Burt Reservoir were completed in August 2000.

Representatives of the State Water Commission reported that in December 1999, bids were opened for the rural water distribution systems in the East Jung Lake and South Hebron pocket areas. In June 2000 a contract was awarded for the Burt service area rural water distribution system. When completed in July 2001, this system will provide water to approximately 160 rural users. A contract for the final portion of the Mott-Elgin phase and the Coffin Buttes service area is expected to be bid in November. The State Water Commission reported that by the end of 2001, water is expected to be delivered to 22 communities and 2,000 rural users.

Northwest Area Water Supply Project

Representatives of the State Water Commission reported that construction of the main transmission line from Lake Sakakawea-Lake Audubon to Minot has been delayed approximately two years pending completion of the National Environmental Policy Act review process. The Northwest Area Water Supply Project is intended to deliver pretreated Missouri River water to Minot with final treatment occurring at that city's existing water treatment plant. The primary issue for study under the National Environmental Policy Act review process is the potential for biota transfer. This study must be conducted to determine whether the Northwest Area Water Supply Project meets the requirements of the Boundary Waters Treaty of 1909.

Bureau of Reclamation Activities

Representatives of the Bureau of Reclamation reported on bureau activities. The reports included construction activities, fish and wildlife mitigation and enhancement activities, recreation program activities, operation and maintenance activities, and study activities. Construction activity reports described the Indian municipal, rural, and industrial water supply program, the state municipal, rural, and industrial water supply program, and irrigation projects on the Standing Rock Sioux Indian Reservation. Fish and wildlife mitigation and enhancement activity reports described design and construction work at the Arrowwood National Wildlife Refuge, mitigation activities at the Audubon National Wildlife Refuge and Wildlife Management Area, work at the Kraft Slough National Wildlife Refuge, work at the Lonetree Wildlife Management area, and work at scattered tracts. Total funding for the recreation program is \$13 million, of which half is to be provided by the Garrison Diversion Conservancy District and half by the Bureau of Reclamation. The Garrison Diversion

Conservancy District and Bureau of Reclamation along with the State Parks and Recreation Department are reviewing the recreation program to develop a recreation plan that is cost-effective and provides the greatest public benefit within existing authorities and funding ceilings. The Bureau of Reclamation and the Garrison Diversion Conservancy District are exploring opportunities to improve recreational use and facilities along the McClusky Canal. Operation and maintenance activities include stabilization of the James River archaeological site, operation and maintenance of the Oakes Test Area, operation and maintenance of the principle supply works—the McClusky and New Rockford Canals, operation and maintenance of the Snake Creek Pumping Plant, and operation and maintenance of tribal municipal, rural, and industrial water supply systems. Study activities included reports on the Northwest Area Water Supply study, the study of wildlife enhancement for the rights of way along the McClusky and New Rockford Canals, and the Red River Valley water needs assessment study. Phase II of the Red River Valley water needs assessment was completed in August 2000. This report concluded that, if nothing is done, the Red River Valley may experience significant water shortages during a future drought. The report describes seven alternatives that may meet the future shortages projected by the bureau and provides a preliminary evaluation of these alternatives. The next step in analyzing Red River Valley needs and options is a feasibility level analysis of alternatives described in the Phase II report, along with other reasonable alternatives, and to begin work preliminary to an environmental impact statement as included in the Dakota Water Resources Act.

RECENT DEVELOPMENTS

Dakota Water Resources Act

The Dakota Water Resources Act would amend the Garrison Diversion Unit Reformulation Act of 1986. The Act outlines a program to meet the water needs of North Dakota including irrigation; municipal, rural, and industrial water supply projects; fish and wildlife; recreation; flood control; augmented streamflows; and ground water recharge. The bill maintains a multipurpose water project to meet the water needs of North Dakota and to compensate the state for the loss of 550,000 acres to the Garrison and Oahe Reservoirs but changes the focus of water development from large-scale irrigation to the delivery of municipal, rural, and industrial water to communities and the four Indian reservations located in this state. The bill would complete the Garrison Diversion Unit Project, while enhancing wildlife habitat and water conservation in North Dakota.

Section 2 of the bill establishes the purposes of the Act to meet the water needs of North Dakota and the four Indian reservations located within the state by development of a multipurpose water project. The

project would develop irrigation and municipal, rural, and industrial water systems; enhance fish and wildlife habitat; promote recreation, ground water recharge, and augmented streamflows; and assure appropriate repayment of federal funds and compliance with environmental laws and the Boundary Waters Treaty of 1909. This section also makes fish and wildlife enhancement a specific project purpose. It deletes language from the 1986 Reformulation Act directing construction of the 450 cubic feet per second James River Feeder Canal and the Sykeston Canal. It also requires the state to repay the federal government for the proportionate share of the cost of features, constructed prior to the Dakota Water Resources Act, which actually get used. This section also specifies that the Secretary of the Interior is responsible for the proportionate share of operation and maintenance costs attributable to unused capacity of project features. It authorizes the Secretary of the Interior to enter necessary agreements with the state to carry out the Act. Finally, this section specifies that water may be diverted from the Missouri River drainage basin into the Hudson Bay drainage basin only after the Secretary of the Interior, after consulting the Secretary of State and the administrator of the Environmental Protection Agency, determines that the Boundary Waters Treaty of 1909 will not be violated. The assigned costs of water treatment and related facilities attributable to meeting the requirements of the Boundary Waters Treaty of 1909 continue to be nonreimbursable.

Section 3 of the bill recognizes wildlife enhancement as a project purpose and identifies those features considered enhancement features which continue to be a federal responsibility. The bill requires the Secretary of the Interior to consult with the state before approving recreation areas and adds "services in kind" as a form of repayment for recreation areas consistent with current Bureau of Reclamation practice. Existing language of an earlier version of the bill that deauthorized the Taayer Reservoir and authorized the Kraft and Pickell Sloughs as a component of the National Wildlife Refuge System is moved to this section. This section also clarifies that the Bureau of Reclamation is authorized to acquire land in the Kraft and Pickell Sloughs areas through donation or exchange of land. Finally, this section deauthorizes the Lonetree Dam and Reservoir and designates the lands as a wildlife conservation area to provide additional wildlife habitat. The intent of the "wildlife conservation area" is that the area would not become part of the National Wildlife Refuge System but that the state would continue to manage the area as a state wildlife management area, the costs of which would be paid by the Secretary of the Interior. If the feature selected under Section 8 includes a buried pipeline between the McClusky Canal and New Rockford Canal, the bill authorizes the use of the wildlife conservation area and Sheyenne Lake National Wildlife Refuge for a route for the pipeline.

Section 4 of the bill provides that interest on repayable capital costs may only be calculated until such time as the feature is substantially complete.

Section 5 of the bill deauthorizes 60,460 acres of irrigation service areas authorized in 1986 (6,515 acres at Lincoln Valley, 2,000 acres at Harvey Pumping, 20,935 acres at New Rockford, 13,350 acres at LaMoure, 4,000 acres at West Oakes Extension, and 19,600 acres at West Oakes.) The bill retains authorization for the existing 5,000-acre Oakes Test Area, 13,700 acres at Turtle Lake, 10,000 acres at McClusky Canal, 1,200 acres of canal-side irrigation along the New Rockford Canal provided the full investment costs are repaid by the users at New Rockford without "aid-to-irrigation," and 28,000 acres in the Missouri River Basin. Before development of any projects in the undesignated 28,000 acres, the Secretary of the Interior must report to Congress on the costs and benefits of the proposed irrigation and the financial and engineering feasibility of the proposed unit. Compliance with the National Environmental Policy Act is also required before developing any projects. This section specifically prohibits any irrigation development authorized under the bill in the Hudson Bay-Devils Lake drainage basin. The bill also retains irrigation authorization on the Fort Berthold Indian Reservation (7,700 acres at Lucky Mound and 7,500 acres at Upper Six Mile Creek, but allows for other areas of equal acreage if approved by the tribe and the Secretary of the Interior) and on the Standing Rock Sioux Reservation (2,380 acres).

Section 6 of the bill harmonizes the repayment required by power users of power from the Garrison Dam with how other power users repay capital costs for other power-generating facilities. Additionally, this section specifically prohibits any increase in power rates for Pick-Sloan program customers that would result from any provisions in the Dakota Water Resources Act.

Section 7 of the bill maintains the 25 percent nonfederal cost-share for the municipal, rural, and industrial water supply projects developed under this section and allows the state to credit amounts that exceed the 25 percent minimum toward future cost-shares for municipal, rural, and industrial water development projects. This section also permits the state to make loans in addition to grants and requires that proceeds from repaid loans be recycled back only into the municipal, rural, and industrial water supply grant or loan program. The Southwest Pipeline Project, Northwest Area Water Supply Project, Red River Valley Water Supply Project, and other municipal, rural, and industrial water supply systems in the state are eligible. This section also authorizes the state to develop a water conservation program and calls on the Secretary of the Interior and the state to establish water conservation goals. If the state meets the goals of the program, the 25 percent nonfederal cost-share for municipal, rural, and industrial water supply systems is reduced to

24.5 percent. This section also makes the cost of features previously constructed on the Missouri River by the Army Corps of Engineers nonreimbursable. Finally, this section maintains the authority for the Secretary of the Interior to develop municipal, rural, and industrial water supply systems on the four Indian reservations located in the state and adds adjacent areas to that authorization to permit water systems to serve tribal members living outside the reservation boundaries.

Section 8 of the bill deletes the existing authority to construct the Sykeston Canal, which was to be a connecting link between the existing McClusky and New Rockford Canals to deliver water from the Missouri River to the Red River Valley. Instead, the bill authorizes a Red River Valley Water Supply Project and establishes a formal process of evaluating the water quantity and quality needs of the Red River Valley and the options for meeting those needs. The Secretary of the Interior and the state are to be partners in developing these studies.

The Secretary of the Interior, with the state as a partner, must complete a draft environmental impact statement within one year of the date of enactment of the Dakota Water Resources Act or report to Congress on the status of the draft environmental impact statement. The Secretary of the Interior and the state are required to submit a final environmental impact statement within one year of filing the draft environmental impact statement or report to Congress on the status of the final environmental impact statement. The Secretary of the Interior is then authorized to select a feature to meet the comprehensive water development needs of the Red River Valley, after reviewing the water needs report, the report on options for meeting those needs, and the environmental impact statement, and after consulting with the state, which will coordinate with affected local communities. Within 180 days of the Secretary of the Interior signing the record of decision, the bill requires the Secretary of the Interior to enter an agreement with the state to construct the feature selected. If one of the features selected is delivery of Missouri River water to the Red River Valley, the Sheyenne River water supply and release feature remains authorized to deliver 100 cubic feet per second of water, or another amount determined by the reports, to the cities of Fargo and Grand Forks.

Section 9 of the bill relates to the Oakes Test Area and authorizes the Secretary of the Interior to transfer the Oakes Test Area to the state not later than two years after signing the record of decision required under Section 8, relating to meeting the needs of the Red River Valley, under terms that the Secretary of the Interior believes would protect the public interest. If the Secretary of the Interior and the state cannot reach an agreement for a transfer by the time limit, the Secretary of the Interior is to dispose of the Oakes Test Area under the Federal Property and Administrative Services Act of 1949.

Section 10 of the bill reduces the authorization ceiling for irrigation and related facilities from \$270,395,000 to \$164,000,000. The remaining funds authorized are intended to be used to repair and complete the McClusky and New Rockford Canals and complete mitigation requirements at the Audubon and Arrowwood National Wildlife Refuges. The bill authorizes \$200 million for the Red River Valley Water Supply Project, to be used for the project feature selected by the Secretary of the Interior pursuant to Section 8. This project is reimbursable. Section 10 authorizes an additional \$300 million for statewide municipal, rural, and industrial water supply systems authorized under Section 7 and an additional \$200 million for municipal, rural, and industrial water supply systems on the four Indian reservations located in the state. These funds are allocated as follows—\$30 million for Fort Totten Reservation, \$70 million for Fort Berthold, \$80 million for Standing Rock, and \$20 million for Turtle Mountain. Additionally, the existing authorization of \$61 million is broken into its component parts of \$40.5 million for the Sheyenne treatment and release facility and the initial \$20.5 million provided for Indian municipal, rural, and industrial water supply studies and systems. This section authorizes an additional \$6.5 million for recreation projects and permits up to \$1.5 million of this amount to be used to develop a Wetlands Interpretive Center in North Dakota. The section also authorizes an additional \$25 million for the natural resources trust and authorizes creation of a separate account, after the features selected under Section 8 are operational, within the trust for operation and maintenance costs of mitigation and enhancement lands. Also authorized is \$40 million for demolition of the existing structure and construction of a new Four Bears Bridge across Lake Sakakawea. This section also includes a provision to index certain costs for inflation from the date of enactment of the Act to reflect normal fluctuations in construction costs consistent with current Bureau of Reclamation practices and a provision that prohibits counting funds spent since 1986 on operation and maintenance against the construction authorization ceilings in this section.

Section 11 of the bill changes the name of the current wetlands trust to the natural resources trust and provides that the trust is to be operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat, grasslands conservation, and riparian areas in the state. This section also authorizes the trust, aside from its existing authority, to fund incentives for conservation practices by landowners. This section also caps the authorized appropriations to the natural resources trust at \$10 million until the features authorized to meet the comprehensive water needs of the Red River Valley are operational. The annual appropriations for the trust are determined by a formula of five percent of the annual funds appropriated for the statewide municipal, rural, and industrial water supply program and the Red River Valley Water Supply Project. Once the Secretary of the

Interior and the state determine the project is operational and meeting the objectives of Section 8, the remaining \$15 million authorized by Section 10 may be appropriated.

Subsequent to the introduction of the Dakota Water Resources Act and before the May 27, 1999, hearing on the bill before the United States Senate Subcommittee on Water and Power, agreement was reached which permitted the administration to testify in support of the Act, subject to incorporation of the following agreements:

- Before construction of any water system to deliver Missouri River water into the Hudson Bay Basin as provided under Section 2, the Secretary of the Interior, in consultation with the Secretary of State and the administrator of the Environmental Protection Agency, must determine that adequate treatment can be provided to meet the requirements of the Boundary Waters Treaty of 1909 between Canada and the United States.
- The additional funding authorized by Section 10 to address the state's municipal, rural, and industrial water supply needs was reduced by \$100 million. The requested ceiling will now be an additional \$200 million rather than the \$300 million in the bill.
- The funding and authorization in Section 10 for the replacement of the Four Bears Bridge across an arm of Lake Sakakawea on the Fort Berthold Indian Reservation will be removed. The agreement includes assurances that the bridge will be included under a different program yet to be determined.
- The principal supply works, which the Secretary of the Interior is directed to maintain and complete, is defined as including the Snake Creek Pumping Plant, McClusky Canal, and the New Rockford Canal. This is a clarification of wording in the bill.
- Agreement was reached on additional concerns relating to the determination of the appropriate share of costs for operation and maintenance on the existing facilities, if used. Mutual understanding was also reached on concerns relating to the operation of an optional loan program within the municipal, rural, and industrial water supply projects grant program and the removal of language that made full funding of the natural resources trust fund conditional upon completion of a Red River Valley Water Supply Project.

Devils Lake

The State Engineer provided updates throughout the interim concerning the Devils Lake flood situation. Devils Lake is normally considered a closed subbasin of the Red River of the North Basin. However, evidence suggests that Devils Lake, on several occasions during the past ten thousand years, has reached its spill

elevation of approximately 1,459 feet mean sea level and overflowed into the Sheyenne and Red Rivers. Geologists have concluded that Devils Lake water levels naturally vary widely due to climatic swings. Beginning 130 years ago with the first recorded level of 1,438.4 feet mean sea level, lake levels fell until the lake reached its recorded low of 1,401.9 feet mean sea level in 1940. From that point, the lake has followed a rising trend reaching the modern high of 1,447.1 feet mean sea level in 1999. The current elevation of Devils Lake is 1,446 feet mean sea level. At this elevation, the lake covers 118,000 acres and is storing 2.3 million acre feet of water. The reduction in the lake level over the past year is due primarily to dry weather conditions the Devils Lake Basin experienced between September 1999 and June 2000.

The State Water Commission is the local sponsor for a permanent outlet to be built by the United States Army Corps of Engineers. Although Congress has released \$2.2 million to the United States Army Corps of Engineers for continuing the design and environmental studies of a west end outlet, there are still many concerns in Congress. The State Water Commission is also in the preliminary design phase of a temporary outlet in the Twin Lakes area that could be built to provide short-term releases before the permanent outlet is constructed. The State Water Commission has applied to the State Department of Health for a discharge permit to release water into the Sheyenne River. The State Water Commission is attempting to design a temporary outlet in a manner that will not require a United States Army Corps of Engineers Section 404 permit.

Devils Lake Litigation

The Attorney General's staff provided updates concerning litigation involving the ownership of the Devils Lake lakebed, *Spirit Lake Nation v. North Dakota, et al.* The source of the lawsuit lies in the 1867 treaty creating a reservation for the Devils Lake Sioux Tribe, now known as the Spirit Lake Nation. The eastern boundary of the reservation was a defined line ending "at the most easterly point of Devils Lake." The treaty then described the northern boundary as "along the waters" of the lake to the lake's most westerly point.

The tribe argues that "along the waters" puts the reservation's northern border on the north side of the lake. The state asserts that "along the waters" meant and has always been understood to mean the south shore of Devils Lake. The state also asserts that at statehood it took title to the lakebed under the rule that states take title to the beds of navigable rivers and lakes when they join the Union.

In 1986 the tribe sued the state, the Garrison Diversion Conservancy District, the United States, and a handful of individuals who owned land along the shore of the lake's west bay. The United States was sued

because it holds title to much of the lakebed. The United States received its interest in 1971 when the Garrison Diversion Conservancy District, as authorized by the Legislative Assembly, deeded much of the lakebed to the United States. This was done to satisfy part of the state's monetary allocation for the Garrison Diversion Unit Project.

In the late 1980s, the United States attempted to get the tribe's lawsuit dismissed on two grounds--the tribe had not satisfied the federal quiet title act and because the tribe sued for the lakebed in a prior action that was settled in 1977, the tribe cannot sue for the lakebed again.

The federal district judge agreed with the United States' interpretation of the 1977 settlement agreement and dismissed the case without addressing the United States' quiet title act defense. The tribe appealed and the United States Court of Appeals for the Eighth Circuit reversed. The circuit court ruled that more evidence is required to determine for certain whether the 1977 settlement agreement included the lakebed. After the Court of Appeals' decision, in the 1990s the case had two prominent features--at times the tribe appeared uninterested in pursuing its claim and the tribe and state held a number of meetings to negotiate a settlement. Approximately one year ago, it became clear a negotiated settlement could not be reached, and the case has thus returned to active status.

The state has filed a motion asking the court to declare Devils Lake navigable at statehood. The motion was supported primarily by a historian's affidavit describing the extensive commercial traffic and pleasure boating on the lake in the late 1800s and early 1900s. The tribe has filed a brief resisting the state's navigability motion, which is now pending before the court.

The United States has renewed its motion asking that the case be dismissed against it on the quiet title act's 12-year statute of limitations. The state has filed a brief, affidavits, and exhibits supporting the United States. The tribe is resisting this motion, which is also now pending.

The state supported the United States' motion even though, if granted, it will not end the case against the state. If the case against the United States is dismissed, however, the state will ask that the entire case be dismissed. This motion will be made on the grounds that the United States, as holder of title to most of the lakebed, is an indispensable party to the litigation, and without its presence the case cannot proceed against any of the other parties.

Section 404 Program

The committee reviewed administration of Section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344] which requires permits to discharge dredged or fill material into navigable waters at specified disposal sites. The Section 404 program is administered

by the United States Army Corps of Engineers, but states may request the Environmental Protection Agency to delegate the Section 404 program to them. In 1993 the Legislative Assembly enacted legislation authorizing the state to assume jurisdiction over the Section 404 program. However, this legislation provided the effective date of the Act is when the state receives approval from the Environmental Protection Agency and adequate funds have been made available from the federal government or other sources to fund the program as determined by the State Engineer and approved by the Emergency Commission. This effective date was amended in 1995 to provide the effective date of the assumption of the Section 404 program of the Clean Water Act is when the State Engineer certifies to the Governor and the Secretary of State that the state has received adequate funds from the federal government or other sources to fund the program as determined by the State Engineer and approved by the Legislative Assembly. This legislation has not become effective.

The committee received testimony that the cost of assuming jurisdiction of the Section 404 program would be approximately \$800,000 per biennium. Testimony indicated the reason the state would want to assume jurisdiction of the program is that it could review permit requests in a more expeditious manner and the state would recoup the cost of assuming the program by making permitting decisions in a more timely manner. As a result of project delays, costs of projects have increased more than the \$800,000 the program would cost per biennium. It was emphasized that the state would still have to comply with all environmental laws in determining whether to issue a permit.

The committee asked the chairman of the Legislative Council to request the Governor to notify the administrator of the United States Environmental Protection Agency that the state intends to assume jurisdiction over the Section 404 program under the Federal Water Pollution Control Act because the state could proceed in a more efficient and expeditious manner in developing and constructing projects that require Section 404 permits if the state administered the program. The Governor notified the administrator of Region VIII of the United States Environmental Protection Agency that the state would like to initiate the process for assuming jurisdiction over the Section 404 program. The State Engineer testified in support of state assumption of the Section 404 program, but said further debate should take place on whether the office of the State Engineer or the State Department of Health is the most appropriate agency to administer the program.

The committee considered a bill draft that would have repealed the contingent effective date of the state assuming jurisdiction of the Section 404 program and appropriated \$800,000 to the State Water Commission for the purpose of administering the program for the biennium beginning July 1, 2001, and ending June 30, 2003. Rather than recommend the bill draft directly, the

committee requested that the bill draft be introduced as an agency bill by either the State Water Commission or the State Department of Health.

Farmland or Ranchland Acquisition Advisory Committee

North Dakota Century Code Section 10-06.1-10 prohibits the purchase of farmland or ranchland by a nonprofit organization for the purpose of conserving natural areas and habitats for biota without approval by the Governor. This section requires the nonprofit organization to first submit a proposed acquisition plan to the Agriculture Commissioner who is required to convene an advisory committee consisting of the director of the Parks and Recreation Department, the State Engineer, the Agriculture Commissioner, the State Forester, the director of the Game and Fish Department, the president of the North Dakota Farmers Union, and the president of the North Dakota Farm Bureau, and for acquisition plans containing lands within the Garrison Diversion Conservancy District the manager of the district. The advisory committee is required to hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and to make recommendations to the Governor within 45 days after receipt of the proposed acquisition plan. The Governor is then required to approve or disapprove the proposed acquisition plan, or any part thereof, within 30 days after receipt of the recommendations of the advisory committee.

The manager of the Garrison Diversion Conservancy District questioned whether the advisory committee is effective or provides any useful purpose and urged the committee to review the membership of the advisory committee or consider abolishing the committee.

The committee considered a bill draft that would have replaced the statutory advisory committee with one convened by and consisting of members as determined by the Governor. The committee received testimony that any legislation to lessen the hurdles that private landowners must surmount to sell their land is positive and that conservation groups are financially sound and are able to pay property taxes on proposed acquisitions in perpetuity. Although testimony indicated this law is an abridgment of private property rights and an impediment to working with the federal government and national conservation groups on issues such as Garrison Diversion, a representative of the North Dakota Association of Counties said the advisory committee enhances local involvement in acquisitions of farmland or ranchland by nonprofit organizations.

State Aid Distribution Fund

North Dakota Century Code Section 57-39.2-26.1 requires each county to reserve a portion of its allocation of state aid distribution funds for further distribution to or expenditure on behalf of townships, rural fire protection districts, rural ambulance districts, soil conservation

districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the Southwest Water Authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The committee received testimony that this distribution formula does not work well for the Garrison Diversion Conservancy District because it is a multicounty district, and distribution to these types of entities is left to the discretion of the board of county commissioners. Some counties have distributed state aid distribution funds based on the formula in effect before 1997, and some have reduced it to zero, which makes it difficult for the Garrison Diversion Conservancy District to plan its budgets.

The committee received testimony that the state aid distribution formula in effect before 1997 rewarded political subdivisions that increased taxes and penalized political subdivisions that did not raise taxes or could not raise taxes because of statutory caps. Testimony indicated the revised state aid distribution formula provides a reasonable funding level for political subdivisions through a continuing appropriation that eliminates the need for biennial discussions and disagreements over funding levels; provides funding that floats with overall state revenues; provides funding tied to population within groups of similar-sized jurisdictions rather than by mill levies; and increases the flexibility and responsibility of elected county and city governing bodies. A representative of the North Dakota Association of Counties testified that the association will urge the governing bodies of counties that are members of the Garrison Diversion Conservancy District to provide a fair allocation to the conservancy district.

Conclusion

The committee makes no recommendation concerning its statutory responsibilities.

PEMBINA RIVER BASIN STORAGE STUDY

Section 7 of Chapter 45 of the 1999 Session Laws provides that the Legislative Assembly finds that floodwater in recent years has inundated parts of the cities of Neche and Pembina, and thousands of acres of farmland along the Pembina River in Pembina County; construction of flood control dams and other impoundments in the Pembina River watershed in the United States and Canada may reduce flows on the Pembina River that may result in less severe flooding of the cities and farmland along the lower reaches of the Pembina River; and within the limits of available funds, the State Engineer is to conduct a comprehensive study of the feasibility and desirability of constructing dams and other impoundments in the Pembina River watershed for the purpose of reducing flows in the lower reaches of the Pembina River. Pursuant to this section, the State Engineer submitted a report to the committee.

The study investigated plans to provide storage sites in the Pembina River Basin that would provide flood control benefits to the area between the cities of Walhalla and Pembina. To provide protection to agricultural lands, the State Water Commission determined that projects should be able to reduce the frequency of flows that exceed the river's bank flow capacity, which is approximately 4,000 cubic feet per second. Reduction in peak flows of any amount would be helpful to the cities of Neche and Pembina. The report concludes, however, that the value of these reductions is extremely difficult to quantify because the flow at Neche is affected by breakout flows between that city and Walhalla. If the flow is reduced at Walhalla, the flow at Neche is not reduced to the same extent. The same factor is present at the city of Pembina, but the situation there is even more difficult because effects of the Red River are pronounced. The report evaluated five alternatives--depression storage, construction of the Pembina Dam, construction of the Pembilier Dam, modification of Rock Lake and Swan Lake, and construction of the Pembilier Dam combined with modification of Rock Lake and Swan Lake. The report concludes that benefits of depression storage are not quantifiable; construction of the Pembina Dam would be at least as costly as construction of the Pembilier Dam but the benefits substantially less; and although construction of the Pembilier Dam combined with modification of Rock Lake and Swan Lake would provide the most benefits, these benefits are not substantially greater than those of construction of the Pembilier Dam alone and come at the additional substantial land acquisition costs to the project. The report concludes that construction of the Pembilier Dam alone is the most effective of the options considered.

The Pembilier Dam was not constructed in the early 1980s because its benefits did not exceed its cost. The reason the dam's benefits did not exceed its cost is because it could not provide 100-year flood control and thus could not be relied upon to remove any of the communities from the 100-year floodplain. Consequently, no benefits for municipal flood protection could be assigned to the project. Agricultural benefits were not sufficient to justify the cost of the project. The cost of constructing the Pembilier Dam in 1982 was estimated at \$44,070,000. This estimate has increased to \$73,597,000, and the report concludes that it is not likely the value of agricultural production has increased to offset this figure and thus make the dam feasible. The report concludes that construction of a project for flood storage alone does not appear feasible. If flood control storage is to be made feasible, it would likely need to be coupled with another valuable use. Irrigation has become more prevalent in Manitoba, and the need for a water supply for this application may offer some opportunity for cooperation with Manitoba which could increase the feasibility of the project.

COMPREHENSIVE STATEWIDE WATER DEVELOPMENT PROGRAM AND STATE WATER MANAGEMENT PLAN AND WATER PROJECT BONDS

Section 9 of Chapter 535 of the 1999 Session Laws requires the State Engineer to report periodically regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance and sources for repayment of bonds to finance construction of flood control projects, Southwest Pipeline Project, Devils Lake outlet, and a statewide water development program during the 1999-2000 interim. The State Engineer reported a draft comprehensive statewide water development program has been prepared. This report updates the State Water Commission's list of proposed water projects in the state; establishes a prioritization process for evaluating projects in terms of funding; analyzes various funding sources, including the water development trust fund, the resources trust fund, state funds, local funds, other federal funds, and bonding; and provides a list of recommended projects for the 2001-03 biennium. The report identifies the total cost of this program at \$74 million. Concerning the issuance of water project bonds, the State Water Commission completed the first bond sale in March 2000. This bond sale totaled \$32.1 million and provided \$23 million to the Grand Forks flood control project, and \$4.5 million to the Southwest Pipeline Project. To date, the State Water Commission has expended \$8.9 million for the Grand Forks flood control project and \$4.5 million for the Southwest Pipeline Project from the bond proceeds. The State Water Commission estimated the cost of Grand Forks flood control features for the current biennium at \$23 million and that is the reason \$23 million of the bond proceeds is allocated for these projects. For the 2001-03 biennium, the Grand Forks flood control project will require an additional \$15 million. Also, construction is expected to commence on Wahpeton, Grafton, and potentially Devils Lake flood control projects during the 2001-03 biennium.

MISSOURI RIVER ISSUES STUDY

Senate Concurrent Resolution No. 4027 reflected the Legislative Assembly's concern with issues related to the Missouri River in North Dakota. In addition to the Pick-Sloan Missouri Basin program, the resolution identified three areas of study, i.e., Missouri River streambank erosion and bank stabilization; United States Army Corps of Engineers' *Master Manual*; and land and natural resource issues, water management, land use, and development of a long-range vision for the Missouri River in North Dakota.

Missouri River Streambank Erosion and Bank Stabilization

In a March 1988 General Accounting Office briefing report entitled *Evaluation of Erosion Problems on Upper Missouri River*, the General Accounting Office discusses streambank erosion problems concerning the Corps of Engineers' six dams and lakes located on the Upper Missouri River in Montana, North Dakota, South Dakota, and Nebraska. The United States Army Corps of Engineers built and operates six dams and lakes on the Upper Missouri River in Montana, North Dakota, South Dakota, and Nebraska. Construction of the six dams and lakes on the Upper Missouri River began in 1933 with the Fort Peck project and ended in 1965 with the completion of the Big Bend project. The Garrison Dam project was started in 1947, and the dam was completed in 1954. The six dams and lakes were designated the Pick-Sloan Missouri Basin program in 1970. In 1982 the Corps of Engineers estimated that since completion, its projects have prevented more than \$1.7 billion in flood damage. In addition, the Department of the Interior estimated the projects have produced more than \$1.4 billion from sales of hydroelectric power, allowed for a steady increase in barge traffic, and provided recreation for millions of people. Irrigation benefits, however, were considerably less than planned. Over 3.5 million acres were planned for irrigation development, but only about 394,000 acres have been irrigated.

Concerning erosion problems, the report notes that bank erosion occurs to some extent on practically all streams in the Missouri River Basin. The predominate factors causing bank erosion are channel meander, varied streamflow rates, channel restriction, and wave action. Other general causes are high sand content of the soil, saturated banks, and the freeze-thaw winter periods.

Before construction of the dams and lakes, the Upper Missouri River had a wide variation of seasonal flows. Typically, a spring rise in flow began in late March or early April when snow cover melted and spring rains came. Flows were low in the summer and through early autumn. From December to February, ice may cover the river as far south as Kansas City, Missouri. Since completion of the dams and lakes on the Missouri River, the Corps of Engineers has evaluated the streambank problems below the dams. In 1987 the Corps of Engineers identified a total of 192 erosion sites on the 375-mile stretch that would require an estimated \$103.6 million to protect. Finally, this report notes the Corps of Engineers has reported that out of nearly 3.5 million miles of rivers and streams nationwide, approximately 142,000 bank-miles have severe erosion problems and need protection. The Corps of Engineers estimated the cost to protect these banks from erosion in 1981 at \$1 billion annually. The Corps of Engineers has reported that the cost of bank protection structures

generally exceed by a large margin the benefits to be derived.

In a report entitled *Upper Missouri River Bank Erosion Montana and North Dakota* prepared by the North Dakota State Water Commission and the Montana Department of Natural Resources and Conservation in April 1991, it is noted that since the completion of the Missouri River main stem reservoirs, the net loss of highly valued lands along the river in the upper basin states has increased substantially. The loss of these lands has adversely impacted landowners, local and state governments, Indian reservations, recreation, wildlife, and the environment. In addition to streambank erosion, delta formation is an increasing problem. As soil eroded from the riverbanks settles out of the water in the upstream reaches of the reservoirs, deltas are formed. These deltas reduce storage areas in the reservoirs, raise the water table of adjacent land, and can cause ice jams and flooding during the fall freeze and the spring thaw. Currently, deltas are being formed south of Bismarck where the Missouri River drops sediment as it enters Lake Oahe and near Williston where the Missouri River drops sediment as it enters Lake Sakakawea. This report concludes that the states in the upper basin of the Missouri River have and are continuing to experience a net loss of land due to bank erosion along the river. The report identifies the reservoirs built and operated by the Corps of Engineers as the primary cause of the erosion due to the discharge of clear water, fluctuations of flow rate, and the elimination of the rebuilding of high valley lands.

A report entitled *Missouri River Bank Erosion Garrison Dam to Lake Oahe*, prepared by the State Water Commission in December 1997, provides a rated listing of Missouri River bank erosion sites and documentation of the process used to create the list as well as cost estimates and justification to protect the erosion sites. This report states that bank erosion along the Missouri River has been a continuing problem since closure of the main stem reservoirs. The present bank erosion results in the permanent destruction of bottom lands, widening of the riverbed, and a continuing net loss of land. This report also notes that soil eroded from the banks settles out of the water in the upstream regions of the reservoirs forming deltas. Reducing the erosion rates would reduce delta formation. The report quotes the Corps of Engineers as stating that bank erosion, unless halted, will gradually transform the present river into a wide area of sandbars, channels, and islands occupying most of the valley floor between bluffs, and will make boating, fishing, and withdrawal of water for off-river uses almost impossible.

This report concludes that the total estimated cost for reinforced revetment for all sites is \$13,640,000 and notes that bank erosion along the Missouri River continues to cause personal and business income losses, property tax revenue losses, irrigation pump site

losses, natural hardwood forest losses, delta formation, and associated impacts to adjacent land. These losses will continue to mount until the Corps of Engineers mitigates the impacts being caused by the operation of Garrison Dam as directed in Section 33 of the Water Resources Development Act of 1988. Section 33 of the Water Resources Development Act of 1988 provides that "the Secretary of the Army is directed to undertake such measures, including maintenance and rehabilitation of existing structures, which the Secretary determines are needed to alleviate bank erosion and related problems associated with reservoir releases along the Missouri River between Fort Peck Dam, Montana, and a point 58 miles downstream of Gavins Point Dam, South Dakota, and Nebraska. The cost of such measures may not exceed \$3,000,000 per fiscal year. Notwithstanding any other provisions of law, the costs of these measures, including the costs of necessary real estate interests and structural features, shall be apportioned among project proposes [sic] as a joint-use operation and maintenance expense. In lieu of structural measures, the Secretary may acquire interests in affected areas, as the Secretary deems appropriate, from willing sellers."

Testimony

The committee received testimony that as a result of construction of dams on the Missouri River, the streambanks have experienced a great deal of erosion. Three-fourths of the needed protection is in place, and only 25 percent of the needed bank stabilization efforts need to be completed. The estimated cost of the remaining needed stabilization is approximately \$13.7 million. Testimony also indicated the delta formation at the headwaters of Lake Oahe has increased over the last 15 years, and if streambank and river bottom erosion continue at the same rate, they will have a significant impact on the city of Bismarck.

The committee received testimony that if the state or federal government were to continue rock riprapping of erosion sites on the Missouri River, it would violate the state's public trust responsibility to manage the river for the people of North Dakota. Testimony indicated the public interest, fish and wildlife interests, and recreation interests must be considered as well as what the losses are to private landowners caused by streambank erosion. Also, the issue of the formation of a delta is not new, and it has long been known that as fast-moving water that is carrying a significant sediment load hits slack water it drops the sediment to form a delta. The committee received testimony that studies are conflicting as to whether the sediment is coming from the Missouri River tributaries or its banks.

United States Army Corps of Engineers' Master Manual

The United States Army Corps of Engineers manages the six main stem dams and reservoirs on the

Missouri River pursuant to the *Missouri River Master Water Control Manual (Master Manual)*. The *Master Manual* was developed in 1960, and with only slight revisions, the last of which occurred in 1979, is used to manage the river today. In response to a lawsuit filed by the Upper Missouri River Basin states against the Corps of Engineers, however, the Corps of Engineers has undertaken a process to revise the *Master Manual*. The *Master Manual* has been under review by the corps since 1989. The first proposed revisions to the *Master Manual* were released in 1994 but were not supported by the Upper Missouri River Basin states. The Corps of Engineers asked the Missouri River Basin Association to identify new recommendations for river management. As a result of this process, the Missouri River Basin Association submitted a list of recommendations. On January 13, 2000, the Corps of Engineers released a fact sheet that summarizes the key points of the north-western division preferred alternative for the *Master Manual*. The fact sheet on the revised draft environmental impact statement for the preferred alternative for the *Master Manual* provides:

Flood control - The base of the annual flood control and multiuse zone will remain at 57.1 million acre feet. This is the target storage for the reservoir system on March 1 each year.

Navigation support triggers - (These are the storage levels that trigger releases for navigation service flows and season length. Lower levels trigger reduced releases for navigation earlier in droughts.) During a drought, navigation target flows will be reduced by 3,000 cubic feet per second if total system storage is less than 54.5 million acre feet on March 15. Target flows will be reduced by 3,000 cubic feet per second and the season shortened to 7.1 months if storage is less than 59 million acre feet on July 1. In a severe drought, target flows will be reduced by 6,000 cubic feet per second from July 1 to August 20 of the following year. A severe drought is defined as a year in which there is no gain in total storage between March 15 and July 1.

Minimum storage - (This establishes the minimum total storage in the reservoirs during droughts.) The new minimum will be 43 million acre feet in a drought like the 1980s. The low point during that event was 40.9 million acre feet in January 1989.

Navigation preclude - (This is the minimum storage level on March 15 for navigation support that year.) If total storage is less than 31 million acre feet, there will be no releases from the reservoirs to support navigation.

Flow enhancement at Fort Peck - There will be an increase in cold water flows from the powerhouse in May and June and a warm water release from the spillway from May through August. (These flows are expected to benefit warm water river fish such as the endangered pallid sturgeon.)

Flow enhancement at Gavins Point - The current schedule of flat releases will be maintained to benefit nesting interior least terns and piping plover, two protected shore-bird species.

Split navigation season - The preferred alternative does not include a split navigation season.

Intrasystem unbalancing - This is a three-year cycle of rotating variable water storage in the three largest reservoirs. This will encourage growth of vegetation around the shorelines to provide fish spawning habitat and hiding places for young fish. Lake levels will drop three to five feet and not affect access.

Mississippi River navigation target - (This establishes a target flow of 90,000 cubic feet per second at St. Louis to benefit Mississippi River navigation during years of excess water in the Missouri River system.) A maximum additional 5,000 cubic feet per second will be released.

Comparison of the Economic and Environmental Benefits of the Preferred Alternative (% Change From the Current Water Control Plan)	
Economic Use/Environmental Resource	Preferred Alternative
Flood control economics	-1
Missouri River navigation economics	-1
Hydropower economics	1
Water supply economics	0
Recreation economics	4
Total national economics	0
Cold river fish temperature habitat	2
Cold reservoir fish temperature habitat	3
Warm river fish temperature habitat	-8
Warm river fish depth/velocity habitat	0
Young-of-year fish production	2
Tern and plover island habitat	43
Wetland habitat	1
Riparian habitat	-2
Historic properties erosion potential	-3
Mississippi River navigation economics	0

The Corps of Engineers has placed the preferred alternative for the *Master Manual* on hold pending the outcome of formal consultations on the operations of the Missouri River under the current water control plan, the Bank Stabilization and Navigation Project, and the Kansas River Project under provisions of the Endangered Species Act with the United States Fish and Wildlife Service. The Fish and Wildlife Service has notified the Corps of Engineers that the current water control

plan does not contain several elements necessary to avoid jeopardizing the continued existence of three protected species--the interior least tern, piping plover, and pallid sturgeon. The Endangered Species Act requires all federal agencies to work to conserve endangered and threatened species. Section 7 of the Endangered Species Act requires federal agencies to ensure that their actions do not jeopardize the existence of any listed species. The consultation period between the Corps of Engineers and the Fish and Wildlife Service may last up to 90 days, after which the service has 45 days in which to prepare a biological opinion on whether the Corps of Engineers action will jeopardize the continued existence of a listed species. Under the Endangered Species Act, jeopardy occurs when an action is reasonably expected to diminish a species' numbers, reproduction, or distribution so that the likelihood of survival and recovery in the wild is appreciably reduced. When the Fish and Wildlife Service makes a jeopardy determination, it also provides the consulting agency with reasonable and prudent alternatives to its proposed action. A reasonable and prudent alternative must be consistent with the purposes of the project, be consistent with the agency's legal authority and jurisdiction, be economically and technically feasible, and avoid jeopardy in the opinion of the Fish and Wildlife Service. Once the Fish and Wildlife Service has issued the biological opinion, the Corps of Engineers may then decide how to proceed. The Corps of Engineers could implement the actions identified in the reasonable and prudent alternatives, modify the project actions and consult again, or apply for an exemption.

The revised timeline for the revision of the *Master Manual* anticipated that the final biological opinion from the Fish and Wildlife Service would be issued on June 30, 2000. The revised draft environmental impact statement was scheduled to be published in September 2000, the public and tribal comment period ends in March 2001, and the final environmental impact statement is scheduled to be published in December 2001. The Washington, D.C., level review and final environmental impact statement is scheduled to be released in June 2002, and the record of decision issued in August 2002. The revised *Master Manual* is scheduled to be released in August 2002, the final annual operating plan issued in January 2003, and the final annual operating plan implemented in March 2003.

Testimony

The State Engineer testified the Corps of Engineers is forecasting runoff in the upper Missouri River for the year 2000 at 17.1 million acre feet. The median runoff is 24.6 million acre feet. The Corps of Engineers forecast calls for Lake Sakakawea to drop from its current level of 1,833.5 feet mean sea level to 1,829.8 feet mean sea level by the end of the year 2000. Lake Oahe is forecast

to drop from 1,600 feet mean sea level to 1,599.6 feet mean sea level by the end of the year.

The State Engineer testified that based on the criteria in the Corps of Engineers preferred alternative for the *Master Manual*, the Missouri River is in a severe drought. The preferred alternative calls for releases to be reduced by 6,000 cubic feet per second and for the navigation season to end three weeks early. The State Engineer testified that the Governor has urged the Corps of Engineers to conserve additional water in upper basin reservoirs.

The State Engineer testified that the Corps of Engineers and the Fish and Wildlife Service are continuing their formal consultations regarding endangered species on the Missouri River. As a result in the delay of the issuance of the biological opinion by the Fish and Wildlife Service, the *Master Manual* environmental impact statement will also be delayed. The state of Missouri has filed suit against the Secretary of the Interior and the Fish and Wildlife Service alleging that the Fish and Wildlife Service has failed to designate critical habitat for the endangered species on the Missouri River in violation of the Endangered Species Act, and therefore the Fish and Wildlife Service should be ordered to cease consultation with the Corps of Engineers.

Land and Natural Resource Issues, Water Management, Land Use, and Development of a Long-Range Vision for the Missouri River in North Dakota

The Burleigh, Oliver, Morton, Mercer, and McLean Counties Joint Water Resource Board has established the Missouri River coordinated resource management program. This program is designed to coordinate the efforts of groups with interests in the reach of the Missouri River between Garrison Dam and Lake Oahe to address natural, cultural, recreational, agricultural, and economic resources of the Missouri River in North Dakota. The program is composed of representatives from state and federal agencies and agriculture, industry, landowner, environmental, and other private organizations. The program includes two groups--the Missouri assessment program technical group and the Missouri River vision group. The Missouri assessment program technical group is composed of several state and federal agencies that were brought together in an attempt to reach an agreement on the data and assessment needs necessary to aid the United States Army Corps of Engineers in completing its *Cumulative Impact Statement* for the reach of the Missouri River from the Garrison Dam to the headwaters of the Oahe Reservoir. This group is also charged with providing technical information to the vision group. The technical group is working to secure technical data on sediment, river channel conditions, impacts based on certain river flows, land use patterns, and other related issues. It is also developing a geographic information system for the river.

The Missouri River vision group is composed of several state and federal agencies as well as a variety of groups and organizations associated with or having concerns regarding the Missouri River. The vision group is working to develop a long-range strategic plan for the Garrison reach of the Missouri River. Issues that the Missouri River coordinated resource management program will attempt to reach a consensus on include floodplain development; setbacks, development, and buffer zones; bank stabilization; and the resolution of public-private land use conflicts.

Testimony

The committee received testimony from representatives of the Burleigh, Oliver, Morton, Mercer, and McLean Counties Joint Water Resource Board and the Sierra Club concerning the study. The committee received a draft strategic plan prepared by the vision group of the coordinated resource management program

which identifies 10 issues to be addressed in the plan. These include aquatic habitat, land use issues, riverbank erosion, endangered species-sandbar habitat, floodplain management-delta formation, riparian woodlands-adjacent wetlands, historical-archaeological features, water quality, regulatory-jurisdictional issues, and *Master Manual*-reservoir operation. The strategic plan also identifies the goals, rationale, tasks, recommendations, and timelines for each of these 10 issues. Representatives of the Burleigh, Oliver, Morton, Mercer, and McLean Counties Joint Water Resource Board reported that the board is still working on developing a strategic plan concerning the Garrison reach of the Missouri River and has not reached a consensus concerning this issue.

Conclusion

The committee makes no recommendation concerning the study of Missouri River issues.

HIGHER EDUCATION COMMITTEE

The Higher Education Committee was assigned responsibilities in two areas.

Section 19 of 1999 House Bill No. 1003 directed a study of higher education funding including input from the Governor, State Board of Higher Education, executive branch, University System campuses, and representatives of business and industry. In addition, pursuant to North Dakota Century Code (NDCC) Section 15-10-14.2, the committee was assigned the responsibility to receive reports from the State Board of Higher Education with respect to the status of the University System, including the progress in meeting goals and objectives.

Section 22 of 1999 Senate Bill No. 2013 directed a study of the role, mission, operation, and privatization of the Division of Independent Study, including educational services provided by the division to out-of-state students.

Committee members were Senators David E. Nething (Chairman), Tim Flakoll, Tony Grindberg, Ray Holmberg, Ed Kringstad, Elroy N. Lindaas, Ken Solberg, Steve Tomac, and Rich Wardner and Representatives Ole Aarsvold, Al Carlson, Jack Dalrymple, Eliot Glasheim, Nancy Johnson, Myron Koppang, Ed Lloyd, Andrew G. Maragos, Bob Stefanowicz, Gerald O. Sveen, and Janet Wentz. Senator Rod St. Aubyn was also a member of the committee until he resigned from the Legislative Assembly on August 30, 2000.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

HIGHER EDUCATION FUNDING STUDY

Section 19 of 1999 House Bill No. 1003 directed a study of higher education funding. The study was to solicit input from the Governor, State Board of Higher Education, executive branch, University System campuses, and representatives of business and industry and address:

- The expectations of the University System in meeting the state's needs in the 21st century;
- The funding methodology needed to meet these expectations and needs; and
- The appropriate accountability and reporting system for the University System.

In addition, pursuant to NDCC Section 15-10-14.2, the committee was assigned the responsibility to receive reports from the State Board of Higher Education with respect to the status of the University System, including progress in meeting goals and objectives.

Background

The North Dakota University System consists of 11 institutions under the control of the State Board of Higher Education. The system served approximately

36,400 students (headcount enrollment) during the 1998-99 academic year which represents approximately 28,200 full-time equivalent (FTE) students. Total spending provided by the 1999 Legislative Assembly for higher education institutions, including the University System office, totaled \$1,042,330,303, of which \$328,813,637 was from the state general fund. The legislative appropriations for the 11 institutions, the University System office, and the Forest Service include 3,263.18 FTE positions for the 1999-2001 biennium.

Higher Education Roundtable

A Higher Education Roundtable consisting of the 21 members of the Higher Education Committee and 40 representatives from the State Board of Higher Education, business and industry, higher education institutions including tribal colleges and private colleges, and the executive branch was formed to address the expectations and needs of the University System in meeting the state's needs in the 21st century. The University System contracted with Mr. Dennis Jones, President, National Center for Higher Education Management Systems, Boulder, Colorado, and Dr. Charles Schwahn, Schwahn Leadership Associates, Custer, South Dakota, for consulting services and to facilitate roundtable discussion and recommendations.

The University System received financial support for the Higher Education Roundtable from the Western Interstate Commission for Higher Education and the Western Policy Exchange, supported by funding from the Kellogg and Ford Foundations.

The Higher Education Roundtable with assistance from the facilitators conducted meetings in Jamestown, Carrington, and Rugby and completed the following:

1. Discussed shifts, trends, and future conditions that impact the state of North Dakota and the University System.
2. Discussed realities relating to the state of North Dakota and the University System.
3. Developed a vision and expectations for the University System.
4. Developed recommendations concerning higher education in North Dakota.
5. Developed accountability measures and success indicators that correspond with the expectations for the University System.

Shifts, Trends, and Future Conditions

The Higher Education Roundtable received information from the facilitators regarding the following shifts, trends, and future conditions that are redefining life, opportunities, challenges, organizations, and careers and impacting the state of North Dakota and the University System:

- Change is our only constant.
- Quality is an entrance requirement.

- Lifelong learning is required of everyone.
- Customers demand value.
- Quality and success are transitory.
- Competence must be considered as capital, knowledge as power.
- The anywhere, anytime workplace is here.

North Dakota Realities

The Higher Education Roundtable received information from the facilitators regarding the following realities facing the state of North Dakota and the University System:

- North Dakota's population is static in size, getting older, and becoming more concentrated in Fargo, Grand Forks, Bismarck, and Minot.
- North Dakota has higher college participation rates than all the surrounding states except Minnesota and Iowa.
- The number of North Dakota high school graduates is projected to decline by more than 1,000 over the next 12 years.
- The proportion of the state's tax revenue allocated to higher education is well above the national average while the overall level of total support provided on a per student basis, which includes tuition and state appropriations, is well below the national average.
- The share of the cost being borne by students has increased considerably in recent years, although tuition relative to family income is not above the national average.

North Dakota University System Expectations

The Higher Education Roundtable, based on its discussions of the shifts, trends, future conditions, and realities facing the state of North Dakota, by consensus, identified that the University System should:

1. Serve an expanded client base, including nontraditional students, lifelong learners, communities, businesses and industries, and should provide rewards and incentives for doing so.
2. Be accessible to clients, considering alternative methods of delivery.
3. Be affordable based upon the client's ability to pay.
4. Be customer-centered and have procedures to "connect" to its customers.
5. Be a high-quality system that emphasizes learner outcomes, high-quality faculty and staff, and current technology.
6. Function as a system where the resources of the system are used to respond to customer needs and the funding mechanism encourages this behavior.

7. Strive to eliminate borders, including the recruitment of out-of-state students, distance education development, and global thinking.
8. Be flexible, responsive, entrepreneurial, and accountable.

North Dakota University System Goal

The Higher Education Roundtable by consensus identified the goal of the University System to be "to enhance the economic vitality of North Dakota and the quality of life of its citizens through a high-quality, more responsive, equitable, flexible, accessible, entrepreneurial, and accountable University System."

Task Force Process

To assist the University System in meeting the established goal, six task forces composed of Higher Education Roundtable members were formed to study the following key areas or "cornerstones" that emerged from Higher Education Roundtable discussions:

- Economic Development Connection - Direct connections and contributions of the University System to the economic growth and social vitality of North Dakota.
- Education Excellence - High-quality education and skills development opportunities that prepare students to be personally and professionally successful, readily able to advance and change careers, be lifelong learners, good citizens, leaders, and knowledgeable contributing members of an increasingly global and multicultural society.
- Flexible and Responsive System - A University System environment responsive to the prioritized needs of its clients and that serves as a model of a flexible, empowering, competitive, entrepreneurial, and rewarding organization for a new economy in a rural state.
- Accessible System - A University System that is proactively accessible to all areas of North Dakota and seeks students and customers from outside the state. It provides students, business, industry, communities, and citizens with access to educational programs, work force training opportunities, and technology access and transfer.
- Funding and Rewards - A system of funding, resource allocation, and rewards which assures quality and is linked to the expressed high-priority needs and expectations of the University System.
- Sustaining the Vision - A structure and process that assures the University System for the 21st century remains connected, understood, relevant, and accountable to the present and future research, education, and public services needs of the state and its citizens.

The task forces, chaired by legislative committee members, met in early 2000 and with the assistance of

the facilitators developed, by consensus, the following recommendations:

Economic Development Connection

1. High-potential primary sector business alliances and partnerships should be actively pursued.
2. Planning and working relationships with local and state development organizations should be strengthened.
3. Program offerings and delivery capabilities should be developed to close the gap between the demand for individuals with technical educational knowledge and skills and the number of such graduates available within the state and nation.
4. Educational programs on the topic of entrepreneurship should be offered at every institution within the University System.
5. Institutions should utilize partnering entities to ensure that state-of-the-art technology is being used.
6. Partnerships with the tribal college should be established to deliver training to the reservations.
7. Opportunities should be developed which take advantage of the underemployed and unemployed work force on the reservations.
8. The development and operation of the state-wide technology infrastructure should be viewed as a public utility.
9. Support for the work force training delivery system that was enacted by the 1999 Legislative Assembly should be continued.
10. Entrepreneurial behavior should be encouraged at each level of the University System.
11. The budget process, appropriation process, and audit function should be modified to be consistent with the direction of the roundtable.
12. Accountability measures must be agreed upon.
13. Technology must be viewed as a key component of the new economy and added to the "four-part economy" proposed in the Vision 2000 report.
14. High-potential research and development opportunities should be identified.
15. Campuses should be encouraged to maximize the potential of the "global" marketplace to the institution, the students, and North Dakota.

Education Excellence

Students and learning:

1. Institutions must be assertive in attracting, recruiting, registering, and retaining quality students.
2. There should be a clear tie between learner outcomes, workplace needs, and the values

and attitudes required for living a full and rewarding life.

3. Students should experience the workplace as part of their quality education.
4. Colleges and universities should clearly identify course and program learner outcomes; instructors should teach those outcomes; and students should be required to demonstrate the outcomes.
5. Students should exit programs with the skills and attitudes to be lifelong learners.
6. Colleges and universities should partner with kindergarten through grade 12 in the development and implementation of education standards.

Faculty and teaching:

1. The University System should make teaching in the University System attractive so campuses can employ and retain a faculty of highest quality.
2. Faculty should regularly involve employers in determining learner outcomes.
3. Skills, attitudes, and strategies of the entrepreneur should be infused into courses and programs.
4. There should be indicators of quality and excellence for all learning experiences.
5. Faculty members and institutions should move from an accountability system focused on process and input to one focused on ends or outcomes.
6. Faculty members should continue to update their knowledge, skills, and teaching strategies.
7. Institutions and their faculties should be provided with state-of-the-art equipment and technology.
8. Colleges and universities should create a culture of continuous improvement.
9. Continuous improvement strategies should not be limited to instructional programs but include all aspects of university operations.
10. Courses and degree programs should focus on the economic and social needs of North Dakota as well as individual needs.
11. Colleges and universities should utilize information technology to provide easy access for rural populations, nontraditional students, out-of-state learners, and lifelong learners.
12. The University System and its campuses should maximize technology opportunities to improve instruction.

Research function:

1. The University System and its faculties should accept the charge to be a critical force in the economic well-being of North Dakota.

2. Research should be allowed to create business opportunities for researchers and entrepreneurs.
3. Research grants should be focused on the economic, social, and educational needs of North Dakota.
4. Faculty should be strongly encouraged, supported, and rewarded in their pursuit of research grants.
5. Students should gain practical research skills.
6. College and university faculty should serve as lifelong learning role models.

Service obligation:

1. Faculty and institutions should apply their knowledge and expertise to meet the real-world economic and social needs of North Dakota and its people.
2. Institutions should continue to provide high-quality cultural activities to the community.
3. The University System should be attractive and available to nontraditional students, and learner outcomes should be based on practical employment needs of the student.
4. The University System and campuses should take responsibility to keep academic programs current and to discontinue programs that are no longer meeting a need.
5. The citizens of North Dakota should be able to view tangible forms of faculty and institution services provided to communities and to the state.
6. Institutions should serve the state by expanding their work force training services to business and industry.

Flexible and Responsive System

Concerning the culture, policies, and practices of the University System:

1. The State Board of Higher Education, the executive branch, the legislative branch, the business community, and campuses should make conscious efforts to build trusting relationships.
2. The University System and individual campuses should create policies, practices, and a culture that encourages and rewards entrepreneurial thinking.
3. Campus leaders should be given more control over and responsibility for their budgets.
4. Campuses should move from a seat time-based credentialing system to a results-based system of credentialing.
5. The University System should provide training necessary to improve the staff's ability to deliver up-to-date learning.
6. The formula for budget allocation should be changed to a system that encourages and rewards the meeting of the needs of

nontraditional students, businesses, and industries.

7. The University System should not lose its focus on the traditional college student.
8. The University System should ensure that any movement toward flexibility and responsiveness be met with an equally strong commitment to quality.

Concerning customer/client/learner focus:

1. The University System through the use of technology should allow individuals to "learn anything, from anywhere, in any way, at any time."
2. The University System should create a "seamless" organization from the perspective of the student.
3. On-campus programs should be customer/learner focused, flexible, and responsive.

Concerning the University System's relationship to the business community:

1. Colleges and universities should identify their customers, customer needs, and delivery systems available to meet the needs.
2. Faculty and staff of the University System should continually update their knowledge, skills, and strategies to meet the needs of their customers/clients.

Accessible System

1. The State Board of Higher Education should designate or establish learner centers throughout the state to provide educational access to underserved areas.
2. Campuses must develop alternative delivery opportunities that are responsive to the needs of all students.
3. The University System must develop and offer programs that are responsive to the needs of the state and are consistent with market trends of the future.
4. Tribal and private colleges should be partners with the University System in meeting educational access needs of the state.
5. Communities and the private sector should partner with the University System to meet local training and educational needs.
6. State government should be responsible for ensuring that affordable broadband high-speed Internet access is available to all citizens throughout North Dakota.
7. The University System should partner with kindergarten through grade 12 to ensure that students leave school systems with the knowledge and skills necessary to function effectively as college students.
8. The funding practices should be modified to encourage multicampus collaboration, to

recognize the constituents served, to encourage new delivery methods, and to balance funding so student costs remain affordable to North Dakota citizens.

9. The State Board of Higher Education should review and modify tuition rates to remain competitive in the global marketplace and expand the client base.
10. The University System should modify its administrative information systems and fiscal practices to support the expanding client base and alternative education delivery methods.
11. The State Board of Higher Education and the campuses should modify their procedures to support the values of the roundtable.
12. The State Board of Higher Education should recommend a fiscal accountability report that is consistent with the new funding model and the values of the roundtable.
13. The University System should take a leadership role in creating an easily accessible directory of education, research, and other higher education services.

Funding and Rewards

1. The State Board of Higher Education and the chancellor should develop and recommend to the Legislative Assembly a financing plan to address the gap between current funding levels and resources needed to implement the recommendations of the roundtable, a resource allocation model, and mechanisms to demonstrate both performance and fiscal accountability. The funding plan should reflect a shared funding responsibility among all payers and make allowance for the need for institutions to fund plant asset depreciation.
2. The resource allocation model should be comprised of a base-funding component, an incentive/performance component, and an asset-funding component.
3. The Legislative Assembly should work with the University System to reach agreement on the proposed funding mechanism.
4. The Office of Management and Budget and the Legislative Assembly should revise the budget request process.
5. The executive and legislative branches should modify the budget and appropriation process.
6. The State Board of Higher Education should establish revenue structures and rates so that affordability of access to the University System is maintained, the campuses' abilities to serve students are enhanced, and the utilization of the state's investment is maximized.
7. The Legislative Assembly should provide lump sum base and strategic appropriations to the

State Board of Higher Education and the institutions.

8. The executive and legislative branches should remove all income that is in addition to the state general fund appropriation from the specific appropriation process and modify processes to provide campuses budgetary flexibility.
9. The State Board of Higher Education should adopt the recommendations outlined in the "Sustaining the Vision" cornerstone.
10. The State Board of Higher Education should develop a consistent set of limited financial reporting measurements that will be used to measure the financial accountability of the campuses.
11. The Legislative Assembly and the State Auditor's office should revise the audit process.
12. The State Board of Higher Education should develop procedures that grant flexibility in the use of resources as long as an institution meets or exceeds expectations established by the board.
13. The State Board of Higher Education and campuses should revise board and institution policies and procedures to reflect the vision of the roundtable.
14. Campuses should allocate funds for maintenance of physical assets based on priorities established by individual campuses.

Sustaining the Vision

1. There should be a mechanism established for sustaining the work of the roundtable through an annual roundtable meeting.
2. The University System should take the initiative in arranging roundtable meetings with state agencies and other organizations.
3. The University System should develop or modify communication feedback systems to obtain essential information for monitoring and measuring progress on accountability measures.
4. The State Board of Higher Education should review the University System's current strategic plan (six-year plan) and redefine as necessary to incorporate the recommendations of the roundtable.
5. The University System should provide an annual performance and accountability report.
6. The State Board of Higher Education should provide a status report on higher education in the state to the Legislative Assembly.
7. The State Board of Higher Education and the chancellor's office should develop and implement a plan for communicating the results and recommendations of the roundtable.

The Higher Education Roundtable accepted the task force reports at its April 2000 meeting in Rugby and forwarded the recommendations to the Higher Education Committee for its consideration.

Higher Education Roundtable

Recommendations Requiring Legislative Action

The committee reviewed the recommendations in the Higher Education Roundtable report which may require legislative action. The recommendations were in six areas--funding issues, information technology infrastructure, reporting and audit issues, research, sustaining the vision, and work force training. Following are summaries of the recommendations:

Funding Issues

- Modify and simplify the budget request and appropriation process to provide campus budgetary flexibility.
- Modify funding practices to encourage and reward multicampus collaboration and the meeting of the needs for students, businesses, and industries.
- Assist in making teaching in the University System attractive so campuses can employ and retain high-quality faculty, including providing state-of-the-art equipment and technology.
- Remove strong oversight and move from a means accountability system to an ends accountability system.
- Provide lump sum base and strategic appropriations to the State Board of Higher Education and institutions.
- Remove all income that is in addition to the state general fund from the appropriation process.
- Continue to approve the construction of new facilities and the major renovation of existing facilities.

Information Technology Infrastructure

- View the development and operation of the technology infrastructure as a public utility thereby ensuring affordable broadband, high-speed Internet access is available to all citizens in North Dakota.

Reporting and Audit Issues

- Reach agreement on financial and performance accountability measures.
- Revise the audit process.

Research

- Maximize research and development funding opportunities such as Experimental Program to Stimulate Competitive Research (EPSCoR) whereby funds are available to assist in research projects in North Dakota.

Sustaining the Vision

- Make a conscious effort to build trusting relationships.
- Provide the legislative changes to allow for the conversion from a "long-range plan" to a "strategic plan."
- Assist the State Board of Higher Education in scheduling a joint session of the Legislative Assembly during each legislative session at which the board can provide a status report on higher education in North Dakota.

Work Force Training

- Provide support for the work force training delivery system.

Constitutional Issues Related to Higher Education Roundtable Recommendations

The committee received information regarding constitutional issues relating to its study of higher education funding and the history of changes in the appropriation of special funds. The committee learned Section 6 of Article VIII of the Constitution of North Dakota provides that the State Board of Higher Education has "full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions." Section 6 of Article VIII further provides that the "said state board of higher education shall have the control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this state; provided, however, that funds appropriated by the legislature and specifically designated for any one or more of such institutions, shall not be used for any other institution."

There have been no judicial decisions concerning the proposal to provide a lump sum or block grant appropriation to the State Board of Higher Education rather than individual institution appropriations. However, legislation passed in 1965 which attempted to authorize the construction of buildings on college campuses and leave it to the discretion of the State Board of Higher Education to determine which facilities and at which locations the buildings were to be constructed was challenged and taken to the Supreme Court. The Supreme Court decision stated the State Board of Higher Education is not vested with legislative powers, and the Legislative Assembly may not delegate legislative powers to the State Board of Higher Education. Supreme Court decisions indicate the Legislative Assembly may delegate certain responsibilities to other governmental entities if there are reasonably clear guidelines that provide adequate standards and procedural safeguards. The Supreme Court has also held that the Legislative Assembly cannot refuse to fund a constitutionally mandated function. Therefore, delegating to the State

Board of Higher Education the authority to determine which institutions are to receive appropriated funds cannot be used in a manner that results in not funding one of the constitutionally created institutions.

In regard to continuing appropriations and changes in the appropriation of special funds, the committee learned Section 12 of Article X of the Constitution requires all public moneys to be deposited with the State Treasurer and disbursed only pursuant to a legislative appropriation. As a general rule, continuing appropriations have not been favored. A recent court decision upheld a continuing appropriation and determined that continuing appropriations do not violate Article X, Section 12 or unconstitutionally bind future legislatures.

The Legislative Assembly does, however, have a history of legislative review and appropriation of special funds. Special fund appropriations have been added for various agencies and institutions to provide legislative control and oversight and to provide for a more all-inclusive statement of agency costs and of total state appropriations. Federal funds were first appropriated for the Department of Transportation and the University of North Dakota Medical Center for the 1967-69 biennium. Federal funds received by the Social Service Board and the Department of Public Instruction were first appropriated for the 1975-77 biennium. The funds from the state tuition fund were first appropriated for the 1979-81 biennium. The agricultural commodity groups were removed from the appropriation process in the 1993-95 biennium, and for the 1997-99 biennium, higher education local funds were appropriated for the first time. The 1999 Legislative Assembly provided an appropriation for three "funding pools" to the North Dakota University System which were to be allocated based on guidelines established by the Legislative Assembly as contained in 1999 House Bill No. 1003.

Financial Accountability Measurements

To assist in the development of financial accountability measurements for the University System, a subcommittee of the committee, the Financial Accountability Measurements Subcommittee, was formed that included some committee members, the chairmen of the Legislative Audit and Fiscal Review Committee and the Information Technology Committee, and private sector, higher education, and executive branch representatives. The development of acceptable financial accountability measurements was determined to be the key to allowing the University System the flexibility recommended in the Higher Education Roundtable report.

The Financial Accountability Measurements Subcommittee reviewed information regarding higher education measurement practices in other states and learned many states tie higher education accountability measurements to higher education goals, and many accountability measurements are related to student successes, access, and program reviews. The subcommittee

developed financial accountability measurements, or annual performance indicators, for the University System in the areas of financing and financial management, faculty and staff excellence, research and development, and financial and statutory compliance. The performance indicators were linked to the expectations or performance standards for the University System included in the Higher Education Roundtable report. The committee accepted the recommended measurements that are discussed in the recommendation section of this report.

North Dakota University System Testimony Regarding the Higher Education Roundtable Report

The committee received testimony from a representative of the University System identifying the following State Board of Higher Education policy changes, statutory changes, campus changes, and changes to the higher education funding methodology to implement the roundtable recommendations:

State Board of Higher Education policy changes:

- Review institution missions to add special emphasis on technical education and work force development, entrepreneurship programs, and partnerships with tribes and opportunities for American Indians.
- Revise salary policies to encourage salary increases and other incentives based on outcomes.
- Update purchasing policies to permit greater flexibility.
- Review patent and copyright policies to encourage high-potential research.
- Review policies to streamline the program approval, termination, evaluation, and student proficiency processes, eliminate unnecessary reporting, provide institutions with greater flexibility to meet changing demands, and shift the focus to a results-based or outcomes-based accountability system.
- Review tuition policies to enhance ways to attract students.

Statutory changes:

- Recognize the University System as a unified system of higher education.
- Amend statutes relating to the powers of the State Board of Higher Education and institution missions to support a responsive, flexible, entrepreneurial, and accountable University System.
- Amend statutes relating to budget requests to eliminate excessive detail relating to the University System.
- Provide for lump sum appropriations to the State Board of Higher Education or to University System institutions, or both. Amend statutes to provide that tuition and other institution revenue

are not specifically appropriated but are subject to a continuing appropriation and may be spent as approved by the State Board of Higher Education and to permit institutions to carry over funds from one biennium to the next.

- Amend statutes relating to the higher education system review and the six-year plan to provide for annual roundtable meetings, strategic planning, and a review involving both public and private sector leaders.
- Amend statutes relating to "fiscal irregularities" and appropriation measures to remove additional reporting requirements and restrictions on performance-based compensation or other incentives.
- Amend statutes relating to patents and copyrights to encourage more high-potential research.
- Amend statutes relating to buildings and capital improvements financed with private funds to clarify when the State Board of Higher Education may authorize improvements or renovations without Budget Section approval.

The committee learned the college and university presidents who were members of the roundtable provided suggestions to the University System on steps to be taken at the campus level to implement the roundtable recommendations. The State Board of Higher Education endorsed the Higher Education Roundtable report and has set nine objectives for its implementation. One of the objectives is to combine the University System's strategic plan and the Higher Education Roundtable report. The University System included in its 2001-03 biennium needs-based budget request two special funding pools--a public agenda and collaborative initiatives pool and an institutional innovation pool. The public agenda and collaborative initiatives pool would be allocated to fund initiatives and reward collaboration that reflects the theme of the roundtable report. The institutional innovation pool would be allocated to campuses to provide seed money for the implementation of the roundtable recommendations.

The committee learned the current higher education funding formula model was developed by the University System in collaboration with the Office of Management and Budget and the Legislative Council in the 1960s and was refined through a legislative study during the 1983-84 interim. The funding model is in large part driven by the number of traditional students enrolled and does not account for nontraditional enrollments such as on-line students or for the high-fixed cost of operations at some of the campuses. During recent bienniums, funding has been on an incremental basis with the formula calculations made but not used in determining budget requests.

The committee learned a new funding model could be developed consisting of three components--base funding, initiative funding, and asset funding. The base

funding would be funding used to sustain the academic mission of an institution and could be provided as a lump sum appropriation to the campuses or the State Board of Higher Education. The level of funding would be based on external benchmark comparisons. Benchmark comparisons would replace the current per student cost comparisons made within the system as those comparisons tend to compare institutions with different missions and costs. The initiative funding would be funds allocated by either the Legislative Assembly or the State Board of Higher Education to support the priorities of the Higher Education Roundtable. The asset funding would be funding for the renewal and replacement of physical plant assets.

Statewide Information Technology Network

The committee received information from a representative of the Information Technology Department regarding the status of the statewide information technology network. The committee learned the Information Technology Department issued a request for proposals (RFP) for the statewide information technology network in March 2000. The RFP was comprised of four parts--transport and local access, customer premises equipment, Internet access, and video bridging and scheduling. The department will award contracts for each portion of the RFP. The implementation of the transport and local access portion that involves connecting 194 cities and 552 physical locations across the state was separated into two phases. The first phase of the implementation expected to be completed by December 2000 involves 64 cities and 218 physical locations and is anticipated to cost approximately \$3 million. The Information Technology Department has financed \$2 million of the anticipated cost with a three-year loan that will be repaid during the 2001-03 and 2003-05 bienniums using funds received from agency billings, and the remaining \$1 million will be paid by using funds collected from 1999-2001 biennium agency billings. The second phase of the implementation which connects the remaining locations will be completed during the 2001-03 biennium. The 2001-03 biennium statewide information technology budget request, which includes implementation and reoccurring transport and local access costs, is approximately \$21 million and is primarily funded from the general fund with a possibility of receiving an e-rate credit of \$3.5 million. The budget may be recommended in various agency budgets including the Information Technology Department, the University System, and the Department of Public Instruction.

University System's Strategic Plan 1998-2004

The University System completed a strategic plan for the six-year period 1998-2004 in accordance with NDCC Section 15-10-14.2. The purpose of the plan was to continue the process of developing a public agenda for

higher education in North Dakota and articulate the proposed vision, mission, goals, and funding needs for the University System to the year 2004. The plan detailed the following seven goals of the University System:

1. Education excellence - To strive for excellence and improve quality learning for students which ensures knowledge and competency in their chosen discipline and emphasizes strong communications skills, analytical thinking, use of technology, and interpersonal skills.
2. Technology and access - To emphasize enhanced use of technology to improve access to programs and services and as a regular component for instructional services and research.
3. Relevant programs - To align programs and services with student interests and with current and future needs of business, communities, and the state, including cultural, social, and citizenry components.
4. Leadership in research - To provide leadership in addressing the high-priority research and development needs and opportunities of the state.
5. Learning environment - To provide an up-to-date and innovative environment for students, employees, and the public and an environment that supports learning, research, and public service.
6. Documented performance - To document the performance and effectiveness of the University System.
7. Collaboration - To improve educational opportunities and services among the campuses, kindergarten through grade 12, and other entities through cooperation and collaboration.

Pursuant to NDCC Section 15-10-14.2, the committee met with the Governor to receive a report from a representative of the State Board of Higher Education regarding the progress toward meeting the goals and objectives in the University System's strategic plan. The report provided information regarding University System and individual campus successes toward the implementation of the goals specifically identified in the University System's strategic plan. The committee learned the seven initial goals identified in the University System's strategic plan were expanded into 23 University System and 313 individual campus strategies which were reviewed and approved by the State Board of Higher Education and include specific measurements, indicators, and timelines.

Committee Recommendations

The committee accepted the Higher Education Roundtable May 2000 report and the recommendations

of the Financial Accountability Measurements Subcommittee, and recommends the following bills:

- Senate Bill No. 2037 to provide a continuing appropriation for all funds in higher education institutions' special revenue funds including tuition and to allow institutions to carry over at the end of the biennium unspent general fund appropriations.
- Senate Bill No. 2038 relating to the requirements of the University System's budget request and appropriation. The budget request for the University System would include budget estimates for block grants for a base-funding component and for an initiative-funding component for specific strategies or initiatives and a budget estimate for an asset-funding component for renewal and replacement of physical plant assets at the institutions of higher education. The appropriation for the University System would include block grants to the State Board of Higher Education for a base-funding appropriation and for an initiative-funding appropriation for specific strategies or initiatives and an appropriation for asset funding for renewal and replacement of physical plant assets.
- Senate Bill No. 2039 to allow the State Board of Higher Education to authorize campus improvements and building maintenance projects that are financed by donations, gifts, grants, and bequests if the cost of the improvement or maintenance is not more than \$500,000. Buildings financed by donations, gifts, grants, and bequests would continue to require Budget Section approval.
- Senate Bill No. 2040 to allow the University System to provide bonuses, cash incentive awards, and temporary salary adjustments without reporting the activity to the Office of Management and Budget as a fiscal irregularity.
- Senate Bill No. 2041 to recognize the institutions under the control of the State Board of Higher Education as the North Dakota University System, and to require the University System to develop a strategic plan which defines University System goals and objectives and to provide an annual performance and accountability report regarding performance and progress toward the goals and objectives.
- Senate Bill No. 2042 to amend and repeal statutes relating to the powers of the State Board of Higher Education and the duties and responsibilities of institutions under the control of the State Board of Higher Education which are no longer appropriate.

The committee recommends the financial and nonfinancial accountability measurements be reported annually at the University System level, the State Board of

Higher Education be responsible for expanding and refining the measurements to evaluate the individual institutions of higher education, that trend information be presented for a 6- to 10-year period depending on the nature of the performance indicator and the information

presented, and that the areas be audited as deemed necessary by the Legislative Assembly.

Higher education financial accountability measurements:

Expectations (Performance Standards)	Annual Performance Indicators
<p>Financing and Financial Management</p> <p>The University System develop a long-term plan for financing the higher education system that addresses any funding gap between current resources and needs, reflects a shared funding responsibility among the state, students, private sector, donors, local governments, communities, and campuses and allows for the funding of plant asset depreciation.</p> <p>The University System ensure:</p> <ul style="list-style-type: none"> • Base funding provided to individual institutions is adequate and provides stable funding consistent with the mission of the campus and is responsive to changing priorities. • Incentive funding pools meet the guidelines established by the Legislative Assembly, the Higher Education Roundtable recommendations, and State Board of Higher Education priorities. • Asset funding provided to individual institutions is used in conjunction with other funds for capital renewal and addressing deferred maintenance. <ul style="list-style-type: none"> • Funds appropriated by the Legislative Assembly for the construction of new facilities and the major renovation of existing facilities are used in a cost-effective manner and within statutory building authority lease payment limitations. • Institutions are funded on an equitable basis. <p>The University System identify and maximize all financial resources available to support the University System, including:</p> <ul style="list-style-type: none"> • Internally generated revenue. <ul style="list-style-type: none"> • Externally generated revenue. 	<p>A status report on higher education financing as compared to the long-term financing plan.</p> <p>Base funding levels and uses including trends in base funding.</p> <p>Incentive funding information, including:</p> <ul style="list-style-type: none"> • Allocation, use of, and results of incentive funding. • Incentive funding as a percentage of the higher education budget. <p>Value of institutional buildings, funds spent on renewal or updates as compared to depreciation, and the status of deferred maintenance including a comparison of the funds appropriated for deferred maintenance to actual funds spent on deferred maintenance.</p> <p>Deferred maintenance ratio measures the size of the University System's outstanding maintenance as compared to its expendable net assets:</p> <p style="text-align: center;"><u>Deferred Maintenance</u> Expendable Net Assets</p> <p>Report on new construction and major renovation capital projects for which specific appropriations are made, including budget to actual comparison, use of third-party funding, and related debt.</p> <p>Funding levels of institutions or other selected indicators as compared to peer institutions.</p> <p>The amount and trends of funding from all financial sources.</p> <p>Operating income ratio measures how inflows from fees for services provided contribute to the University System's overall funding:</p> <p style="text-align: center;"><u>Operating Income</u> Educational and General Expenses</p> <p>Contributed income ratio measures how externally generated resources other than debt contribute to the University System's overall funding:</p> <p style="text-align: center;"><u>Contributed Income</u> Educational and General Expenses</p>

Expectations (Performance Standards)	Annual Performance Indicators
<ul style="list-style-type: none"> • Revenue generated from the state. • Debt issued to support University System operations. • Tuition and fees. <p>The University System use moneys appropriated from the general fund and other income, including tuition in a cost-effective manner in meeting the recommendations identified in the Higher Education Roundtable report including the following areas:</p> <ul style="list-style-type: none"> • Funding for core education services. • Funding for educational support services. • Funding for general support services. • Investment in equipment and technology. <p>The University System be financially sound and viable.</p>	<p>State general fund appropriation levels and trends as compared to changes in the state's economy and total state general fund appropriations.</p> <p>Trend report on per capita and per student appropriations for higher education.</p> <p>The amount of debt incurred and supported in relation to limitation requirements.</p> <p>Debt coverage ratio demonstrates the portion of net income available to meet the debt burden should economic conditions change: <u>Adjusted Change in Net Assets</u> Debt Service</p> <p>Affordability index detailing:</p> <ul style="list-style-type: none"> • Tuition and fees on a per student basis and total cost of attendance compared to peer institutions. • Tuition and fees as a percentage of median North Dakota household income. • Student affordability considering financial aid. <p>Trend reports on the distribution of expenditures by function.</p> <p>Educational core services ratio provides information regarding the portion of total funds being used for instruction, research, and public service: <u>Educational Core Services Expenses</u> Educational and General Income (all funding excluding capital and debt service amounts)</p> <p>Educational support services ratio provides information regarding the portion of total funds being used for academic support and student services: <u>Educational Support Expenses</u> Educational and General Income (all funding excluding capital and debt service amounts)</p> <p>General support ratio provides information regarding the portion of total funds being used for institutional support, operations, and maintenance of physical plant: <u>General Support</u> Educational and General Income (all funding excluding capital and debt service amounts)</p> <p>Equipment expenditure ratio provides information regarding the portion of equipment inventory replaced: <u>Annual Expenditures for Equipment Replacement</u> Equipment Inventory Value</p> <p>Financial ratios and other financial information which would indicate:</p> <ul style="list-style-type: none"> • Viability ratio measures the ability of expendable net assets to cover debt. • Primary reserve ratio measures the ability to continue to operate without additional net assets. • Return on net assets ratio measures the changes in net assets. • Net income ratio measures surpluses or deficiencies. • Debt, assets, and end-of-year fund balances.
<p>Faculty and Staff Excellence The University System should strive for a quality-focused, productive, and rewarded faculty and staff.</p>	<p>Faculty and staff trend information, including:</p> <ul style="list-style-type: none"> • Ratio of faculty and staff to students. • Faculty and staff turnover rates and major reasons.

Expectations (Performance Standards)	Annual Performance Indicators
<p>Research and Development The University System should focus research and development on the economic and social needs of North Dakota, increase public-private North Dakota research and development partnerships, and reward faculty for research and development efforts.</p> <p>Financial and Statutory Compliance The University System comply with related state laws and generally accepted accounting principles.</p> <p>The State Auditor's office use performance audit standards reported in biennial audits that:</p> <ul style="list-style-type: none"> • Represent a balanced approach identifying appropriate financial noteworthy accomplishments and successes. • Address University System compliance with legislative intent. • Concentrate on high-risk areas of institutional operations. 	<ul style="list-style-type: none"> • Faculty and staff salary levels, including annual average salary increases and comparisons with peer institutions. <p>Research and development efforts trend information, including:</p> <ul style="list-style-type: none"> • Total funding received for research, including federal, state, local, and private sources. • Revenue generated or additional funding earned by research and development projects. <p>Research expenditure ratio measures the amount of research expenditures per faculty FTE:</p> $\frac{\text{Research Expenditures}}{\text{Faculty FTE}}$ <p>Annual audit report, with an unqualified opinion, that identifies suggested material areas of improvement to the University System's financial operations.</p> <p>Biennial audit report reflecting:</p> <ul style="list-style-type: none"> • Budget to actual appropriation statements. • Appropriate financial noteworthy accomplishments and successes. • A reduction in material areas of statutory noncompliance. • University System compliance with suggested significant areas of improvement.

Higher education nonfinancial accountability measurements:

Expectations (Performance Standards)	Annual Performance Indicators
<p>Economic Development Connection The University System:</p> <ul style="list-style-type: none"> • Respond to the current work force needs of employers. • Encourage entrepreneurship. • Use the colleges and universities as a direct source of economic development in all areas of the state. <p>Education Excellence The University System:</p> <ul style="list-style-type: none"> • Ensure students receive a quality education which prepares them to be readily employable, technically skilled, and personally successful. • Ensure faculty are respected practitioners and students of the future who establish ties between learner outcomes and workplace needs. 	<p>Trends in the number and percent of businesses and employees in the region receiving training. (Duplicate: see also Accessible System)</p> <p>Levels of satisfaction with training events as reflected in information systematically gathered from employers and employees receiving training.</p> <p>Levels and trends in enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs.</p> <p>Level and trends in percentage of University System graduates obtaining employment appropriate to their education in state and out of state.</p> <p>Levels and trends in partnerships and joint ventures between University System institutions and the following entities:</p> <ul style="list-style-type: none"> • Business and industry. • Tribal colleges. • Private sector training providers. • Other University System institutions. <p>Levels and trends in performance of students on nationally recognized exams in their major fields in comparison with national averages.</p> <p>Levels and trends in licensure pass rates in comparison to other states.</p> <p>Levels and trends in alumni-reported satisfaction with preparation in:</p> <ul style="list-style-type: none"> • Major.

Expectations (Performance Standards)	Annual Performance Indicators
<ul style="list-style-type: none"> • Encourage institutions and faculty to constantly seek a high-level of program excellence. <p>Flexible and Responsive System The University System:</p> <ul style="list-style-type: none"> • Encourage, support, and reward risk-taking, innovation, and change. • Employ a customer or client focus, study and react to present and future needs of learners and business and industry, and tailor learning experiences to the needs of the learner. <p>Accessible System The University System:</p> <ul style="list-style-type: none"> • Identify and deliver education and research services throughout the state in numerous ways from a variety of providers. • Support an expanded client base which includes students, business and industry, and all citizens of the state. 	<ul style="list-style-type: none"> • The acquisition of specific basic and higher-order skills. • Level, currency, and relevance of computer technology knowledge and abilities in relation to expectations in the marketplace. <p>Levels and trends in employer-reported satisfaction with preparation of recently hired college graduates.</p> <p>Maintenance of accreditation of programs and institutions by national and regional accrediting bodies and acquisition of additional accreditation where appropriate.</p> <p>Levels and trends in peer review process results for:</p> <ul style="list-style-type: none"> • Grants. • Publications. <p>Levels and trends in proportion of students achieving goals - Institution meeting the defined needs/goals as expressed by students.</p> <p>Proportion of University System decisionmakers (deans and higher levels) indicating whether "they can operate more flexibly now than in the past."</p> <p>Total number and trends in full-time, part-time, degree-seeking, and non-degree-seeking students being served.</p> <p>Number and trends regarding individuals, organizations, and agencies served through noncredit activities.</p> <p>Levels of satisfaction with responsiveness as reflected through responses to evaluations and surveys of clients:</p> <ul style="list-style-type: none"> • Graduates and program completers. • Employers. • Business/program advisory councils. • Companies and employees receiving training. • Work force training boards. • Campus presidents' advisory councils. • Public school superintendents. • Economic development professionals. • Other client groups served. <p>Levels of satisfaction and reasons for noncompletion as reflected in a noncompleters survey.</p> <p>Levels and trends in the proportion of residents of the state who are within a 45-minute drive of a location at which they can receive educational programs from a provider, including providers from outside the immediate region (and would also have access to academic and student support services at the site).</p> <p>Levels and trends in the number of enrollments in distance learning courses by in-state and out-of-state residents.</p> <p>Levels and trends in the number and proportion of enrollments in courses offered in nontraditional ways (i.e., place, time, and format).</p> <p>Levels and trends in rates of participation of:</p> <ul style="list-style-type: none"> • Recent high school graduates; nontraditional students (typically part time and older than average). • Individuals pursuing graduate degrees. <p>Trends in the number and percentage of businesses and employees in the region/state receiving training. (Duplicate: see also Economic Development Connection)</p>

Expectations (Performance Standards)	Annual Performance Indicators
<p>Sustaining the Vision The University System establish a mechanism for sustaining the work and implementing the recommendations from the Higher Education Roundtable report.</p>	<p>The extent to which the recommendations of the 2000 roundtable are implemented and the performance as reflected in the accountability measurements is improved:</p> <ul style="list-style-type: none"> • An annual performance and accountability report directly linked to the expectations developed by the roundtable is developed and widely distributed. • An annual Higher Education Roundtable meeting(s) is held and accomplishes the purposes indicated in No. 1 of Sustaining the Vision recommendation. • A status report on the state of the University System is presented to the Legislative Assembly during each legislative session. • The University System reports on communications regarding the various recommendations of the roundtable--audiences reached, media used, presenters involved, etc. • A checklist is maintained of action steps required and progress attained in meeting the expectations and accountability measurements agreed upon.

The committee anticipates the 2001 Legislative Assembly Appropriations Committees will address the state's support for the implementation of the statewide information technology network, research and development funding opportunities such as EPSCoR, and the work force training delivery system.

STUDY OF THE DIVISION OF INDEPENDENT STUDY

Section 22 of 1999 Senate Bill No. 2013 directed a study of the role, mission, operation, and privatization of the Division of Independent Study including educational services provided by the division to out-of-state students.

Background

The Division of Independent Study, a division of the Department of Public Instruction, was established in 1935 by the North Dakota Legislative Assembly to provide distance education courses for students in kindergarten through grade 12 and adults. The division is regionally accredited through the North Central Association of Colleges and Schools and is a member of the Independent Study Division of the University of Continuing Education Association.

The Division of Independent Study contained two units--the Independent Study Center and the North Dakota Learning Resource Center. The Independent Study Center provides distance education services to elementary, middle, and high schools. The North Dakota Learning Resource Center, which was dissolved as the result of a business operational review, provided services such as educational video distribution, educational resource materials, and curriculum kits to schools for developing the potential of students.

Mission and Goals

The committee learned the Division of Independent Study's mission is to provide personalized distance learning services and educational resources. The division offers courses to students in the traditional print-based correspondence format and through on-line courses on the World Wide Web. The division is involved in three distance education initiatives and its future plans include the conversion of the remaining 132 print-based courses to on-line courses, development of fourth and fifth grade curricula, rewriting courses to meet North Dakota subject area content standards, the introduction of appropriate delivery systems as new technologies are introduced, the writing and offering of an advanced placement geography on-line course, and collaboration with the state University System in the development of dual enrollment courses.

Course and Student Enrollments

The committee learned the division's course enrollments for the 1999-2000 fiscal year were 9,592, an increase of 3.2 percent from the previous fiscal year. The division's student enrollment for the same period was 6,092, an increase of 10 percent from the previous fiscal year. For the 1999-2000 fiscal year, the number of North Dakota students enrolled increased slightly from 1,312 to 1,335 and the number of out-of-state students enrolled increased from 4,241 to 4,757.

1999-2001 Appropriation and Student Fees

The committee learned the division's budget for the 1999-2001 biennium is \$5,474,839, of which \$677,830 is from the general fund, \$4,115,262 is from other funds consisting of fees and material charges, and \$681,747 is federal funds. The division's general fund appropriation has been reduced since the 1991-93 biennium and for the 1999-2001 biennium is approximately 13 percent of the total budget.

The division's tuition rates are \$61 per half-credit course for North Dakota residents and \$73 for nonresidents. The nonresident tuition rate was increased by \$8, from \$65 to \$73, following the 1997 Legislative Assembly.

Privatization

Representatives of the division expressed concerns regarding the privatization of the Division of Independent Study. Without the credibility of being a state institution, the division's programs would not have the same appeal to resident or nonresident students or schools, and course and student enrollments would decrease. Privatization could lead to the elimination of distance education services in North Dakota because decreasing enrollments result in a higher per student delivery cost.

In addition, the committee learned all 29 of the independent study organizations in the United States are public, and all are university-related except for the North Dakota Division of Independent Study. There is one private school, the American School in Chicago, which provides secondary education.

Business Operational Review

The committee learned a business operational review of the Division of Independent Study was conducted during September and October 1999. The consultant reviewed all aspects of the business operations including the areas of administrative offices, business office, production center, support services, and education staff. The operational review concluded the Division of Independent Study is in a position to provide distance education and class conferencing to the school districts of North Dakota which would have far-reaching benefits to the state. The recommendations from the business operational review included the following:

1. Position the division as an education cooperative to support the mission of the Department of Public Instruction.
2. Reorganize the business office to support management and control the business and technical requirements of the operation.
3. Define the organization to include the following divisions--human resource, technology services, support services, and accounting.
4. Reassign the responsibilities of the Learning Resource Center into the mainstream operation of business and education organization.

5. Upgrade the technical applications of support services to both the business operation and the educational programs.
6. Focus delivery of educational services on the primary goal of serving the students of North Dakota.
7. Structure prices to target the reduction of cost for educational services to North Dakota students.
8. Develop business partnerships to support the division's mission by reducing the costs of services and by implementing technology.

The committee learned as a result of the recommendations of the business operational review the division's business office operation was reorganized for efficiency and a general ledger accounting package was installed which provides monthly revenue and expenditure reports to the director. The division's Learning Resource Center discontinued its general rental of 16 millimeter film and videotapes, and the remaining 2.5 FTE positions were reassigned to the division's center operation. The division received a \$25,000 National Geographic grant to develop two semesters of on-line advanced placement geography, and the division partnered with the Fargo Public Schools to develop eight semesters of on-line courses in a number of areas.

Committee Conclusion

The committee makes no recommendations regarding its study of the Division of Independent Study.

BUDGET TOURS

During the interim, the Higher Education Committee functioned as a budget tour group of the Budget Section and visited the University of North Dakota, Mayville State University, Bismarck State College, North Dakota State University, State College of Science, Valley City State University, Main Research Station, and Division of Independent Study. The committee heard of institutional needs for capital improvements and programs and of any problems the entities may be encountering during the interim. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 2001 Legislative Assembly.

INFORMATION TECHNOLOGY COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-15.2 requires the Legislative Council, during each biennium, to appoint an Information Technology Committee in the same manner as the Council appoints other interim committees. The committee is to consist of four members of the House of Representatives and three members of the Senate. The Chief Information Officer of the state serves as an ex officio nonvoting member of the committee.

North Dakota Century Code Section 54-35-15.2 establishes the duties of the committee. The committee is required to:

1. Meet at least once each calendar quarter.
2. Receive a report from the Chief Information Officer of the state at each meeting.
3. Review the business plan of the Information Technology Department.
4. Address macro-level questions relating to the Information Technology Department.
5. Review the activities of the Information Technology Department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. Conduct studies of information technology efficiency and security.
9. Make recommendations regarding established or proposed information technology programs and information technology acquisition by the executive and judicial branches.
10. Review the cost-benefit analysis of any major information technology project of an executive or judicial branch agency. A major project is a project with a cost of \$250,000 or more in one biennium or a total cost of \$500,000 or more.
11. Perform periodic reviews to ensure that a major information technology project is on its projected schedule and within its cost projections.

North Dakota Century Code Section 54-35-15.3 authorizes the committee to review any information technology project or information technology plan. If the committee determines that a project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget the suspension of the expenditure of moneys appropriated for a project or plan. The Office of Management and Budget may suspend the expenditure authority if the office agrees with the recommendation of the committee.

The Legislative Council assigned to the committee the responsibility to receive reports from the Chief Information Officer and the Information Technology Department pursuant to NDCC Sections 54-59-12 and 54-59-13. Section 54-59-12 requires the Chief Information Officer to report to the Legislative Council regarding

the coordination of services with political subdivisions. That section also requires the Chief Information Officer and the commissioner of the State Board of Higher Education to report to the Legislative Council regarding coordination of information technology between the Information Technology Department and higher education. Section 54-59-13 requires the Information Technology Department to report to the Legislative Council if the department finds that an executive branch agency or institution does not agree to conform to its information technology plan or comply with statewide policies and standards.

Committee members during the 1999-2000 interim were Senators Larry J. Robinson (Chairman), Ken Solberg, Rod St. Aubyn (until his resignation from the Legislative Assembly on August 30, 2000), and Rich Wardner and Representatives Mary Ekstrom, Doug Lemieux, Blair Thoreson, and Robin Weisz and Chief Information Officer Curtis L. Wolfe. Before the appointment of Mr. Wolfe as Chief Information Officer, Mr. Jim Heck and Mr. Mike Ressler served on the committee as Chief Information Officer.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

BACKGROUND

The Legislative Assembly has been closely involved in the development of information technology at the state level for over thirty years.

1967-68 and 1969-70 Studies

As a result of a Legislative Council study during the 1967-68 interim, the 41st Legislative Assembly enacted legislation establishing the Central Data Processing Division (renamed the Information Services Division in 1989) for the purpose of establishing an electronic data processing center to be used by all state agencies except the institutions of higher education, Job Service North Dakota, and the Office of the Adjutant General. As a result of a Legislative Council study during the 1969-70 interim, a higher education computer network was funded at three institutions and was later extended to all institutions of higher education under the State Board of Higher Education.

1979-80 Study

As a result of a Legislative Council study during the 1979-80 interim, the 47th Legislative Assembly defined the responsibilities of the Information Services Division and state agencies for the use of data processing resources and provided that the director of the division was to supervise all executive branch agency data processing activities.

1995-96 Study

Recommendations resulting from a Legislative Council study during the 1995-96 interim were contained in 1997 House Bill No. 1034--that agencies prepare information technology plans; that the Information Services Division establish statewide information technology policies, standards, and guidelines; that the division and the State Board of Higher Education meet to coordinate their information technology systems and services; that the State Auditor provide information systems audits of information technology systems; and that the division perform information technology management reviews of state agencies except higher education institutions. Before final passage, House Bill No. 1034 was amended to involve the Legislative Council in the information technology planning and audit process and to remove the State Auditor from the information systems audit process.

1997-98 Study

During the 1997-98 interim, the Legislative Council established the interim Information Technology Committee and delegated to the committee the Council's authority to study emerging technology and evaluate its impact on the state's system of information technology (that authority was repealed in 1999). The committee was also delegated the Council's responsibility to receive reports regarding coordination of technology systems.

The committee received information regarding information technology plans in other states and reviewed guidelines developed by the Information Services Division for agencies to follow in preparing the information technology plans required as a result of 1997 House Bill No. 1034. The committee also received information from several state agencies regarding their efforts during the information technology planning process.

The committee reviewed the status of the statewide network, which was established in 1982. In 1991 the network's backbone was converted to digital facilities, and the Interactive Video Network was implemented. Because the committee determined that the current network resources needed to be analyzed before determining whether any change in the network should be made, the committee contracted with Inteliant Corporation for an inventory of all current networks used for voice, data, and video communications.

After receiving the report, the committee contracted with Inteliant Corporation to conduct a detailed research of five other states and develop a set of recommendations for North Dakota for implementing changes to its network. The plan presented the following recommendations:

- Establish a statewide communications infrastructure agency for all telecommunications planning, selection, implementation, and management for

all state agencies, higher education, and public schools.

- Establish the director of the agency as the Chief Information Officer for the state as a cabinet-level position reporting directly to the Governor.
- Establish a state communications infrastructure board that includes representatives from the three branches of government, private enterprise, and local government with the overall responsibility to approve standards and policies related to network technologies in the state.
- Mandate that the agency develop a business plan defining rate plans, missions, goals, policies, transition plan, business objective, measurements, and general procedures.
- Establish a group within the agency for improving personnel productivity and workflow processes for customers.
- Establish a technology development fund to establish the statewide network and to evaluate emerging technologies and implement common, shared components for users of the network.
- Require each entity that uses the statewide network or is a user of agency services to file a strategic information technology plan.
- Establish a project quality assurance process to provide an independent assessment of the status of major projects.
- Create a division within the agency to plan and administer access to state information primarily through the Internet.

The committee received initial cost estimates assuming that it would take six years to convert to a new network. The estimates contained in the plan were \$6.1 million additional expense during the 1999-2001 biennium; \$2.6 million additional expense during the 2001-03 biennium; \$3.6 million savings during the 2003-05 biennium; and \$12.5 million savings during the 2005-07 biennium.

Inteliant also prepared a Statewide Telecommunications Plan Financial Analysis & Fiscal Note, which was completed in January 1999. That document suggested that between 1998 and 2005 the state will increase spending for wide area network services for state agencies from \$19.3 million to \$57.6 million.

The committee recommended Senate Bill No. 2043, which, as introduced, provided for the establishment of an Information Technology Department to replace the Information Services Division and to be responsible for all telecommunications planning, selection, and implementation for all state agencies and institutions, counties, cities, and public elementary and secondary schools. The bill provided that the department would be administered by a chief information officer appointed by the Governor. In addition, the bill, as introduced, called for the creation of an information technology board, consisting of four legislators appointed by the Legislative

Council, seven members appointed by the Governor, the Chief Information Officer, the commissioner of higher education, and the Supreme Court administrator. The board would have been responsible for approving the business plan of the department, reviewing and approving statewide information technology standards and the statewide information technology plan, assessing major projects to ensure quality assurance, and reporting to the Governor and the Legislative Council on matters concerning information technology. The bill substantially implemented the recommendations contained in the Strategic Telecommunications Plan prepared by Inteliant.

The committee also recommended Senate Bill No. 2044, which, as introduced, created a Legislative Council Information Technology Committee. The bill provided that the committee's duties would include establishing statewide goals and policy regarding information systems and technology, conducting studies of information technology efficiency and security, reviewing activities of the (newly created) Information Technology Department, and making recommendations regarding established or proposed information technology programs and information technology acquisitions.

The committee reviewed information regarding the potential impact of the failure of computer hardware, software, and embedded chips due to not being year 2000 compliant. The Information Services Division sent an impact survey to 110 state agencies in March 1998 to increase agency awareness of the potential for problems. Because most state agencies indicated that agencies did not have a year 2000 project in place, the committee contracted with Inteliant to conduct a year 2000 assessment of four state agencies--the Workers Compensation Bureau, the State Department of Health, State Radio, and the State Hospital. The assessment presented by the consultant contained the following 11 recommendations:

- Appoint a state year 2000 director to provide leadership to ensure involvement by senior management in agencies.
- Appoint agency year 2000 directors to ensure accountability or responsibility for year 2000 efforts assigned to a senior management individual in each agency.
- Assess year 2000 readiness across departments to ensure there are no surprises.
- Agencies should formalize their project management, testing, and contingency plans for their year 2000 issues.
- Continue to develop material available on the state year 2000 web page to avoid duplication of effort and achieve the highest-quality processes.
- Establish public affairs programs to increase public confidence in the state's ability to mitigate year 2000 issues.
- Educate and motivate the private sector to take steps to prepare for the year 2000.

- Require all vendors providing goods and services, including service contract renewals and equipment or facility leases, to provide written assurances that they comply with year 2000 requirements.
- Review contracts to determine which party is responsible for year 2000 compliance and include specific assignment of responsibility in contracts renewed before January 1, 2000.
- Establish financial contingencies at the state and agency level, based on each agency's assessment and the overall risk of failure, and appropriate funds to the Emergency Commission to distribute as unforeseen emergencies arise due to year 2000 complications.
- Ensure that legislators are cognizant of the potential impact of 1999 legislation on an agency's year 2000 remediation efforts.

1999 Legislation

The 1999 Legislative Assembly adopted Senate Bill No. 2044, which established the Information Technology Committee and set forth its responsibilities as provided for in NDCC Sections 54-35-15.1, 54-35-15.2, and 54-35-15.3.

The 1999 Legislative Assembly also adopted Senate Bill No. 2043 (codified as NDCC Chapter 54-59), which established the Information Technology Department to replace the Information Services Division. The department is responsible for all wide area network services planning, selection, and implementation for all state agencies, including institutions under the control of the State Board of Higher Education, counties, cities, and school districts. As a result of Senate Bill No. 2043, wide area network services responsibility for state agencies and institutions became effective July 1, 2000, and with respect to counties, cities, and school districts, the bill provides an effective date of August 1, 2001. With respect to a county, city, or school district, wide area network services are those services necessary to transmit voice, data, or video outside the county, city, or school district. The department is also responsible for computer support services, host software development, statewide communications services, standards for providing information to other state agencies and the public through the Internet, technology planning, process redesign, and quality assurance.

The Governor is required to appoint the Chief Information Officer of the state on the basis of education, experience, and other qualifications in information technology and administration. The Chief Information Officer is required to administer the department.

North Dakota Century Code Section 54-59-05 provides that the department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the

institutions under the control of the board of higher education.

2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase or lease equipment or replace, including by trade or resale, equipment as may be necessary to carry out this chapter. Each executive branch agency or institution, except the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
5. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
6. May request information on or review information technology, applications, system development projects, and application development projects of executive branch agencies.
7. Shall study emerging technology and evaluate its impact on the state's system of information technology.
8. Shall develop guidelines for reports to be provided by each executive branch agency, institution, or department, the institutions under the control of the board of higher education, and agencies of the judicial and legislative branches on information technology in those entities.
9. Shall review the information technology management of executive branch agencies or institutions, including institutions under the control of the board of higher education as provided in section 54-59-13.
10. Shall perform all other duties necessary to carry out this chapter.

North Dakota Century Code Section 54-59-06 requires the department to develop and maintain a business plan that must:

1. Define the department's overall organization, mission, and delivery of services.
2. Define the strategies for improving personnel productivity and workflow processes of the department.
3. Determine how use of the statewide network will improve learning in the state.
4. Determine how the statewide networks can provide network services for the benefit of Indian tribes, nonprofit organizations, and noncommercial public television stations licensed by the federal communications commission to operate in this state.
5. Determine the specific strategies and processes to ensure that agencies share information, systems, and the statewide network.
6. Define the processes that will ensure that counties, cities, and school districts receive maximum benefit of the statewide network.
7. Define a fair and equitable billing structure that provides for payback of the initial investments and ongoing operations of the statewide network.
8. Address the processes that will be put in place to ensure that the department exercises its powers and duties with minimal delay, cost, and procedural burden to an entity receiving services from the department; to ensure that the department provides prompt, high-quality services to an entity receiving services from the department; to ensure that an entity receiving services from the department is aware of the technology available and to

ensure training on its use; and to foster information technology innovation by state entities.

9. Address the deployment of encryption and the administration of digital signatures.
10. Address information and system backup and disaster recovery.

North Dakota Century Code Section 54-59-07 establishes a Statewide Wide Area Network Advisory Committee consisting of the Chief Information Officer or the officer's designee, the state court administrator or the administrator's designee, the commissioner of higher education or the commissioner's designee, and nine members appointed by the Governor. Of the nine members appointed by the Governor, two must represent state agencies, one must represent a county, one must represent a city, two must represent elementary and secondary education, one must represent noncommercial public television stations licensed by the Federal Communications Commission to operate in this state, and two must represent private industry and be knowledgeable in the deployment of major technology projects.

Each agency or institution is required to appoint an information technology coordinator to maintain liaison with the Information Technology Department and assist the department in areas related to making the most economical use of information technology.

The department is required to cooperate with each state entity providing access to any computer data base or electronically filed or stored information to assist in providing economical, efficient, and compatible access. The Chief Information Officer is required to conduct conferences and meetings with political subdivisions to review and coordinate information technology.

Under NDCC Section 54-59-13, the department is required to review the information technology management of executive branch state agencies and institutions, including the institutions under the control of the State Board of Higher Education, to evaluate the entity's planning effectiveness, conformance to its information technology plan, compliance with statewide policies and standards, asset quality, and training methods. The department is also required to conduct an analysis of an entity's contract management system and each contractor's compliance with contract provisions with respect to any entity that contracts for information technology services.

The 56th Legislative Assembly also adopted House Bill No. 1037 (codified as NDCC Sections 32-12-05 and 44-04-23 and subdivision e of subsection 3 of Section 32-12.1-03), which was recommended by the interim Information Technology Committee. The legislation limited state and political subdivision liability for failure to become year 2000 compliant. Section 32-12-05 provides that the state may not be liable for a contract or tort claim resulting from failure of software, a telecommunications network, or a device containing a computer

processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the state has made a good-faith effort to make the computer software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. Section 32-12.1-03 also includes similar immunity for political subdivisions with respect to a tort claim. House Bill No. 1037 was amended by the Legislative Assembly to enact Section 44-04-23, which provides an exception to open records requirements for year 2000 processing information gathered by a public entity which relates to computer hardware or software, telecommunications networks, or devices containing a computer processor.

STATEWIDE NETWORK

North Dakota Century Code Section 54-59-08 requires each state agency and institution that desires access to wide area network services and each county, city, and school district to obtain those services from the Information Technology Department. The Chief Information Officer is authorized to exempt a city, county, or school district from that requirement if its current wide area network services are more cost-effective for or more appropriate for specific needs of that entity than wide area network services available from the department. The department is required to provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.

In 1984 the Higher Education Computer Network was integrated into the statewide network, which was initiated in 1982, and the North Dakota Information Network was created to jointly manage the network. North Dakota was the first state with combined state government and higher education networks. In 1985 the network was extended to all counties to provide connectivity between county social service boards and the Department of Human Services.

In 1991 the network's backbone was converted to digital facilities, and the Interactive Video Network was implemented on these new digital facilities. In 1992 the North Dakota Information Network selected AT&T's Software Defined Network (SDN) long-distance voice services, and North Dakota became an earlier adopter of virtual private network technology. In 1994 the North Dakota Information Network committed as the anchor tenant for U S West (now known as Qwest) to establish a statewide frame-relay network. Also, in 1994 the North

Dakota Information Network provided Internet access from the state network, and Northwest Network was selected as the Internet provider.

In 1996 all buildings on the Capitol grounds with the exception of the Governor's residence were connected with fiber optics cable; and in 1997 state government entered a partnership with Montana-Dakota Utilities Company for fiber optics cable connection of 10 state government buildings in Bismarck to the Capitol. In 1998 the state moved its cross-LATA connections to Dakota Carrier Network.

In late 1999 and early 2000, the Chief Information Officer held meetings with representatives of Dakota Carrier Network and Qwest regarding a negotiated contract for a new statewide network. However, Dakota Carrier Network withdrew from the negotiations because its representatives indicated they were unable to discern any benefits of a joint proposal with Qwest.

On March 27, 2000, the Information Technology Department issued a request for proposals for a new statewide network. The contract proposal was divided into four components, and the department received 12 responses to the four components. The department established three evaluation teams to review the proposals--one team from the department, one team from higher education, and one team from elementary and secondary education.

Sprint was determined to be the best bidder with respect to the Internet access component with a price of \$13,900 for 45 megabit service. The bid price was approximately 50 percent lower than the prices being paid by the department. Norstan was determined to be the best bidder with respect to the video bridging component. However, because it was determined the bidders did not fully understand the requirements of the request, the department delayed awarding the video portion of the bid. In addition, the evaluation teams recommended that the department negotiate a contract with General Datacom for MPEG2 video equipment. With respect to the customer premises equipment portion of the proposal, Corporate Technologies submitted the best bid for wide area network and local area network and IP telephony equipment. Corporate Technologies offered a 36 percent price discount on Cisco hardware and software, a 29 percent discount on Cisco Smartnet maintenance, a 35 percent discount on most Nortel equipment, and a 34 percent discount on Paradyne and other Nortel equipment. With respect to the transport component of the proposal, Dakota Carrier Network submitted the best bid for network transport and access. Dakota Carrier Network was determined to be the best bidder due to its network design, the potential for local jobs, and a significantly lower cost. The backbone of the network consists of eight ATMs and 31 additional ATM switches with a network operations center located in Bismarck.

When the new statewide network is fully implemented, there will be 552 physical connections to the network. Phase 1 of the network rollout includes

connections to 218 locations in 64 communities. The department's goal is to have 177 locations converted to the new network by December 1, 2000. As of November 3, 2000, 152 locations had been converted. In addition, fiber optics connections had been installed to all 11 college and university campuses by November 3, 2000. Although funds were not specifically appropriated by the 56th Legislative Assembly for implementation of the new statewide network, funds from existing budgets were used to cover approximately \$3 million in equipment and circuit costs during the 1999-2001 biennium.

The department presented its proposed budget for Phase 2 of the network rollout during the 2001-03 biennium. The network rollout budget includes over \$17 million to build a telecommunications infrastructure and support for the network. Most of the funds will be used to connect to high schools and libraries in the state and provide training and support for those users. The \$17 million proposed budget does not include \$3.7 million in reimbursement as a result of the federal e-rate credit. Under the proposal, the state will cover the cost of basic T-1 connectivity and one-time and recurring costs of \$4,260,765. Dakota Carrier Network is purchasing the routers and including the cost in the circuit cost so that the e-rate reimbursement may be maximized. The proposed budget includes funds for the following entities and uses:

Center for Innovation in Instruction	\$594,000
Educational Telecommunications Council	\$129,000
Elementary and secondary education equipment - Video and local area networks	\$6,000,000
Interactive Video Network - Statewide video support	\$2,739,194
SENDIT technology services	\$1,427,000
ExplorNet	\$590,300
North Dakota Association of Counties	\$248,000
Higher education (work force education)	\$1,856,280
CPE - Elementary and secondary education/libraries - One-time expenditure	\$3,340,000
Recurring costs	\$4,260,765

Service rates charged by the department for the 2001-03 biennium will increase with respect to programming and systems analysts services while central processing unit (CPU) rates and disk storage rates are expected to decrease. In addition, with the conversion to the new statewide network, device connection and circuit connection rates will increase.

The Statewide Wide Area Network Advisory Committee provided for under NDCC Section 54-59-07 was established to advise the department with respect to planning and implementation of network services provided by the department. Now that the statewide network is being implemented, the need for the advisory committee appears to be obviated. In response to a request from the committee, the Governor appointed a network implementation and utilization task force to address telecommunications infrastructure

implementation and support, public policy issues, information technology work force development and training needs, and economic development initiatives. Because there is likely to be a continuing need for a group to advise the department with respect to statewide information technology planning concerning electronic government services, technology infrastructure to support economic development and work force training, and other statewide information technology initiatives and policy, there was interest in establishing a new advisory committee to consult with the department on those issues.

INFORMATION TECHNOLOGY DEPARTMENT PROPOSED 2001-03 BUDGET

The budget request for the Information Technology Department for the 1999-2001 biennium was \$49,659,295, \$250,000 of which was from the general fund. In September 2000, the Emergency Commission approved an additional \$6,562,800 in spending authority for the department to be used for a Job Service North Dakota project, contract programming services, and operating and equipment expenses for the wide area network. Thus, the total budget for the biennium is \$56,222,095.

In its 2001-03 budget request, the department is requesting an increase from the 1999-2001 biennium. The proposed budget will include an additional \$31,046,098 in special funds, much of which would be dedicated to the Department of Human Services' Health Insurance Portability and Accountability Act project. However, as discussed under MAJOR INFORMATION TECHNOLOGY REPORTS, that project may be reduced in scope, which would result in a reduced special fund appropriation to the department. The proposed budget also includes an additional \$8,198,543 in general funds. Thus, the total budget request will be \$95,466,736, which is an increase of \$39,244,641 over the 1999-2001 biennium. The proposed budget for the department includes 60 new full-time employee positions and 77 new contract programmers. In addition, the proposed budget includes \$1 million for an innovation fund. The proposed innovation fund would be used to provide funds for any state agency that may develop a new project for which it did not request funding. The Chief Information Officer indicated that the details of the application and approval process for the innovation fund have not been fully developed.

FINANCING OF INFORMATION TECHNOLOGY PROJECTS

The Chief Information Officer reported that the Attorney General informed the Information Technology Department that state law did not specifically authorize the department to finance the cost of acquiring equipment or software. Therefore, the department could not

continue to acquire equipment by financing the purchase. Because of the need of the department to have the ability to finance large purchases, the Chief Information Officer requested the committee to consider a bill draft to authorize the department to finance the purchase of equipment and software.

INFORMATION TECHNOLOGY INITIATIVES

In implementing the goals of the Information Technology Department's business plan and the statewide information technology plan, the department reviewed several of the department's initiatives.

E-Government

E-commerce is the use of internetworked computers to create and transform business relationships. E-commerce applications are designed to provide business solutions to improve the quality of goods and services, increase the speed of service delivery, and reduce the cost of business operations. The Information Technology Department developed a new statewide portal to provide a user-friendly access to state government, one-stop shopping for government information and services, and an enterprise approach to maximize efficiencies. To address the state's e-commerce needs, the department purchased hardware and software, trained staff, provided marketing assistance to agencies, and created a special team to work on e-commerce projects.

Despite the progress in implementing e-government initiatives such as on-line game and fish licensing, there are challenges to be faced in the implementation process. Before e-government can be successful, citizens must trust the security and privacy of the systems. In general, if information is being collected from consumers, consumers should be told the information is being collected and for what purpose. In addition, consumers should be given the choice to decline to allow collected information to be used for certain purposes. Consumers should also be given access to personal information to verify its accuracy. Finally, measures must be in place to secure information from unauthorized use. The adoption of the Uniform Electronic Transactions Act, which was recommended to the interim Judiciary Committee by the North Dakota Commission on Uniform State Laws, is an essential element to furthering the progress of e-government in the state.

The department has included \$481,842 in its proposed 2001-03 budget to address e-government. The Chief Information Officer indicated that the e-government initiatives will be implemented in three phases. The first phase, which will be implemented through 2002, involves moving a small amount of low-risk, clearly bound, constituent-focused services on-line. The second phase, between 2002 and 2005, will integrate different bureaucratic departments. During the third phase, beginning in 2005, there will likely be legislative mandates to drive the organizational reinvention

necessary to synchronize government processes and jurisdiction with Internet front-ends.

Enterprise Resource Planning

The higher education system has used its administrative mainframe system, which supports student information and financial systems, for approximately 25 years. Because the technology is becoming outdated and the software being used by many of the larger school districts in the state will no longer be supported, a new integrated system is envisioned to address the needs of the institutions of higher education, students, the State Board of Higher Education, and other users, e.g., elementary and secondary education. A new integrated system will integrate student, financial, and human resource systems serving higher education, state government, and elementary and secondary education. Along with the new statewide network rollout, the enterprise resource planning initiative of the Information Technology Department is to allow e-purchasing, employee access, public access, and agency operation to provide improved financial information. The State Board of Higher Education has indicated that the board's 2001-03 budget request will contain a request for funds to begin replacement of the administrative system. Because the estimated cost of the project is approximately \$25 million, the Chief Information Officer has proposed that the project be financed through the issuance of bonds. The proposed 2001-03 budget request of the department contains \$469,931 for enterprise resource planning.

Geographic Information Systems

Several state agencies have been using geographic information systems for several years, and the needs of state agencies for additional applications are increasing. The Governor established a geographic information systems technical committee to organize geographic information systems activities of the various agencies of state government. In 1998 the committee requested the Information Services Division to fund a study of geographic information systems activities and to prepare a plan for the future of geographic information systems in the state. Because that study was not funded, the committee requested the Information Technology Department in 2000 to fund a study. The department contracted with a consultant to conduct a study and prepare a plan. The major finding of the study was that geographic information systems data is difficult to share because of the lack of a central depository. After receiving comments from the various agencies using geographic information systems, the department proposed the creation of a centralized hub within the department. The proposed 2001-03 budget request of the department includes \$1,059,317 to support the establishment of a geographic information systems hub.

Electronic Document Management Systems

Electronic document management systems are a collection of enabling technologies, the common components of which include document management, imaging, electronic forms, workflow, and data stores. The purpose of such systems is to increase the efficiency of information creation, capture, storage, and retrieval; to provide a common interface for storing and accessing information; to provide increased security of sensitive and confidential information; and to support decision-making by providing access to up-to-date information.

The Secretary of State and the Workers Compensation Bureau have established electronic document management systems. In addition, 21 agencies included plans for implementing electronic document management systems technology in their 1998 information technology plans. Although agencies with large systems in place will continue to use those systems, the Information Technology Department will attempt to build a system with the flexibility necessary to meet the needs of most agencies. As a result, participating agencies will have the ability to share information. The proposed 2001-03 budget request of the department includes \$1,309,317 in special funds to address electronic document management systems needs.

Information Technology Purchasing

The Information Technology Department reported that it had implemented purchasing initiatives through which state agencies may purchase products at lower prices. The department entered an agreement with Oracle Corporation through which agencies will receive a volume discount that may amount to 50 percent. Although the Attorney General advised the department that participation in the Western States Contracting Alliance was not authorized by state law, representatives of the department indicated that the department will propose legislation to allow the state to enter the alliance. The department is also cooperating with the State Board of Higher Education to address telephone long-distance purchasing.

Information Technology Grants

The Information Technology Department has not engaged in the active pursuit of grants. However, because numerous grant sources are available, the department reported it will actively seek grants to supplement or replace general funds. To initiate this process, the department has indicated that an employee may be assigned to identify priorities, develop plans, and identify grant sources.

Criminal Justice Systems

The Information Technology Department has established a goal to create a strategic plan by March 2001 to integrate criminal justice information systems. Integration of criminal justice systems will provide efficiency

benefits through the use of graphical interfaces and centralized data repositories; easy and secure access to selected judicial information via electronic means; and more informed decisionmaking due to accessibility of justice-related information. To begin the study process, a grant of \$25,000 has been secured from the National Governor's Association to pay travel expenses to meetings and workshops. In addition, a second potential grant source may have been identified as a source of funding for the planning phase. To be successful, the process will attempt to include participation from state, county, and city officials.

Information Technology Personnel Recruitment and Retention

Because of the high demand for and a national shortage of skilled information technology employees, the Information Technology Department and other state agencies are faced with problems in recruiting those employees. Although the department has experienced a relatively low rate of turnover, the Department of Transportation and the Department of Human Services have not been as fortunate.

The Information Technology Department contracted with a consultant to survey its employees and contractors to determine how to best prepare for the future, identify training and developmental needs, gather information on organizational effectiveness and key management subject areas, strengthen the department's strategic business and planning processes, and identify actions that will allow the department to be more successful. The results of the survey indicated that the strengths of the department are a strong personal satisfaction and pride among its employees; clear and reasonable expectations linked to the department's mission and goals; a strong customer focus; and responsible employees with initiative. The survey indicated that weaknesses to be addressed related to performance and work unit measures, organizational and interpersonal communications, empowerment of employees, recognition and compensation, and work and job design.

Subsequent to the survey, actions were taken to address the findings of the survey, including implementing flexible work arrangements and additional solicitation of employee comment. In addition, the department conducted a compensation study to compare its salaries with the private sector and contracted for an organizational study to restructure the department and improve its services and efficiency. The department also is cooperating with the Central Personnel Division, the Department of Human Services, Job Service North Dakota, and the Department of Transportation to form a committee to address recruiting and retention issues. Short-term solutions identified to address the shortage of skilled employees include revising minimum qualification requirements, streamlining job classes to provide for additional flexibility, and revising and emphasizing new recruiting efforts. Longer-term solutions include

performance recognition and an increased focus on all aspects of employee job satisfaction.

INFORMATION TECHNOLOGY DEPARTMENT BUSINESS PLAN

North Dakota Century Code Section 54-59-06 requires the Information Technology Department to develop and maintain a business plan. Pursuant to that directive, the department prepared a plan that identified the following four general components that form the nucleus of the statewide vision for information technology:

1. State government should be customer-focused.
2. State government should be efficient.
3. State government should be well-managed.
4. State government should provide the leadership for developing a shared infrastructure.

The plan also identified the following critical issues the department must address to transition itself for a successful future:

1. Promote and coordinate the evaluation, integration, and application of current and emerging information technologies within state government.
2. Enhance and manage an effective integrated communications network infrastructure capable of supporting the statewide vision for information technology.
3. Promote, coordinate, and assist state agencies in moving government on-line.
4. Improve services to agencies by developing closer relationships to better understand their business needs.
5. Foster the communications of information technology activity by becoming the communication "catalyst" within state government.
6. Create technology standards and best practices to ensure accountability and interoperability among governmental entities in support of the statewide vision for information technology.
7. Utilize the department's information technology resources and investments effectively and efficiently.
8. Continue to enhance the agency information technology planning process to meet the needs of the various stakeholders.
9. Recruit, develop, and retain skilled information technology workers.

In response to the critical issues and vision threads identified by the department, the department developed the following four strategic goals:

1. Align information technology with customers' businesses to better understand customer business requirements and raise awareness of technologies available to provide products and services that will assist them in accomplishing their goals and objectives.

2. Provide statewide direction and leadership to provide strategic information technology direction for government and education in the state and influence the deployment of information technology throughout the state.
3. Provide value to the department's customers to continually strive to improve the quality and timeliness of the department's services while maintaining competitive rates.
4. Maintain human resources to achieve an efficient, motivated, and educated work force with knowledge, skills, and ability to meet the department's current and future challenges.

In the business plan, the department identified the following four principles and philosophies under which it operates:

1. The department has an obligation to balance the individual needs of agencies with the best interest of the state as a whole.
2. The department is an extension of the agencies' information technologies and is committed to being proactive in an effort to assist its customers in using the available technologies to effectively and efficiently accomplish their goals and objectives.
3. The department is committed to dealing openly and honestly with its customers and continually improving the quality, price, and timeliness of its services.
4. The department is in the business of providing knowledge to its customers and is committed to developing and maintaining a level of expertise through education, acquiring the proper tool set, and focusing on its customers' needs.

The department also adopted a mission statement that states the department is to "provide leadership and knowledge to assist our customers in achieving their mission through the innovative use of information technology."

Although the business plan is complete, it is viewed as a "living" document that is subject to change based upon changing expectations and changes in technology. As technology changes and the information technology needs of state agencies change, changes will be needed in the business plan. In addition, after the transition from the Information Services Division to the Information Technology Department and the implementation of the new statewide network, the statutory requirements regarding the contents of the business plan may require revision.

INFORMATION TECHNOLOGY POLICIES, STANDARDS, AND GUIDELINES

North Dakota Century Code Section 54-59-09 requires the Information Technology Department to develop statewide information technology policies, standards, and guidelines based upon information received

from state agencies and institutions. Except with respect to academic and research uses of information technology at the institutions under the control of the State Board of Higher Education, each executive branch state agency and institution is required to comply with the policies and standards developed by the department.

The department has adopted standards and policies in a variety of areas and continues to update and adopt new standards and policies as necessary. Policies and standards adopted or under consideration include contract guidelines for information technology projects, policies for e-business security, and geographic information systems standards. The department held several standards and policies review group meetings with representatives of state agencies to discuss the adoption of standards and policies.

INFORMATION TECHNOLOGY PLANS

North Dakota Century Code Section 54-59-11 requires every executive branch agency to prepare an information technology plan, subject to approval by the department. The plan must be submitted to the department by January 15 of each even-numbered year. The plan must be prepared based on guidelines developed by the department; must provide the information technology goals, objectives, and activities of the entity for the current biennium and the next two bienniums; and must include a list of information technology assets owned, leased, or employed by the entity. Each entity required to file a plan must provide interim updates to its plan if major information technology changes occur which affect its plan. The department is required to review each entity's plan for compliance with statewide information technology policies and standards, and the department may require an entity to change its plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches are required to file their information technology plans with the department by January 15 of each even-numbered year.

The Information Technology Department prepared guidelines to be used by state agencies in preparing the plans required by NDCC Section 54-59-11. The guidelines were developed to ensure that the plans submitted by agencies are useful for the agencies and provide information necessary for the budget process for the agency and the Office of Management and Budget. The guidelines were also designed to require agencies to provide information standards compliance information.

Although representatives of various state agencies expressed concerns regarding the value of the plans and amount of work required to prepare the plans, there were assurances from the department that agencies would be given the flexibility needed to make the plans a document that will prove to be a valuable resource for the agencies. Agency representatives also indicated that changing the deadline for submission of the plans from

January 15 to March 15 would assist the agencies in the budgeting process.

Representatives of the department testified that there is some confusion regarding whether information submitted to the department in the information technology planning process is open to the public. The Chief Information Officer stated that representatives of the Information Technology Department would like the flexibility to release records that are obviously not considered confidential or to refer open records requests to the agency that submitted the information to the department.

INFORMATION TECHNOLOGY DEPARTMENT COORDINATION OF SERVICES

North Dakota Century Code Section 54-59-12 requires the Chief Information Officer and the commissioner of the State Board of Higher Education to meet at least twice each year to plan and coordinate their information technology. The Chief Information Officer and commissioner are required to consider areas in which joint or coordinated information technology may result in more efficient and effective state government operations. Upon request, the Chief Information Officer is required to report to the Legislative Council or its designated committee regarding the coordination of services with political subdivisions, and the Chief Information Officer and commissioner are required to report to the Legislative Council or its designated committee regarding their findings and recommendations.

The Chief Information Officer and representatives of the State Board of Higher Education cooperated in developing the request for proposals for the new statewide network and in reviewing the proposals. In addition, the department and representatives of the State Board of Higher Education worked closely in addressing proposals for student information systems, financial systems, and human resource systems. Representatives of the two entities also serve together on a number of committees set up by each entity.

The Chief Information Officer and representatives of the department participated in several meetings sponsored by the North Dakota League of Cities and the North Dakota Association of Counties to provide information regarding the rollout of the new statewide network. In addition, counties and the department cooperated to provide information technology services in several areas.

MAJOR INFORMATION TECHNOLOGY REPORTS

The committee is authorized to review any information technology project or information technology plan. If the committee determines that a project or plan is at risk of failing to achieve its intended results, the committee may recommend to the Office of Management and Budget the suspension of the expenditure of moneys

appropriated for the project or plan. In addition, the committee is directed to review the cost-benefit analysis of any major information technology project of an executive or judicial branch agency. A major project is a project with a cost of \$250,000 or more in one biennium or a total cost of \$500,000 or more.

The committee reviewed the quarterly lists of major projects compiled by the Information Technology Department as well as cost-benefit analyses of proposed major projects. The committee did not recommend the suspension of any project. However, the committee did express concern with respect to the vehicle registration and titling system project undertaken by the Department of Transportation. Although the project was significantly behind schedule, the major vendor for the project was required by the project contract to pay liquidated damages to the department for costs incurred by the department as a result of the delays. The Information Technology Department conducted an audit of the project and assisted in establishing a revised project schedule. Although the project was not fully implemented as of November 6, 2000, the first phase of the implementation process began on October 14, 2000, as provided for in the revised schedule.

Representatives of the Department of Transportation testified that the implementation process was progressing well as of November 6, 2000.

Representatives of the Information Technology Department and the State Board of Higher Education expressed concern that the cost-benefit analysis requirement did not exempt higher education institutions with respect to academic and research projects. Requiring a cost-benefit analysis for those types of projects would place a substantial burden on the department and be of little value because many of those projects do not involve state funds. It was suggested that NDCC Section 54-35-15.2 be amended to limit the cost-benefit analysis requirements to only projects that significantly impact the statewide wide area network or the statewide library system or are administrative projects.

The committee also received reports regarding major projects proposed for the next biennium. Of particular interest to the committee was the project required by the federal Health Insurance Portability and Accountability Act. Although the project was originally expected to cost approximately \$25 million, it is now anticipated that due to revisions in the scope of the project, the potential cost of the project may be \$8.9 million.

REPORTS OF NONCONFORMANCE

North Dakota Century Code Section 54-59-13 requires the Information Technology Department to report to the Legislative Council if the department finds that an executive branch agency or institution does not agree to conform to its information technology plan or comply with statewide policies and standards. Although the department reported that not all agencies had been diligent in preparing agency information technology

plans, all agencies ultimately submitted the plans as required.

YEAR 2000 PREPARATION AND REMEDIATION STATUS REPORTS

Because of concerns with the difficulty of computer processors in recognizing the year 2000, the committee requested regular updates from the Information Technology Department regarding the status of state agencies in addressing potential year 2000 problems. As part of the year 2000 education process, the department cooperated with the Department of Transportation to distribute at least 350,000 informational brochures with motor vehicle license and registration renewals. The Information Technology Department also held monthly meetings with state agencies and regular meetings with representatives of cities, counties, and school districts. The department posted all state agency year 2000 progress reports on its web page.

Although many agencies were unable to begin year 2000 remediation efforts until the beginning of the new biennium, every agency completed its efforts before January 1, 2000. Despite investing less than most states in the nation on remediation efforts (\$25 million) state government experienced very few year 2000 problems. Of the problems reported, most were minor and required an average resolution time of 15 minutes or less. According to those involved in the year 2000 remediation processes, the investments in remediation were crucial to the fact that few problems occurred.

CONSULTANT STUDIES

The Legislative Council contracted with the Inteliant Corporation and Nexus Innovations, Inc., (the Bismarck branch of Inteliant was purchased by the Bismarck Inteliant employees and assumed the Nexus name) to conduct studies to assist the committee in its deliberations.

Telecommunications Study

The telecommunications study focused on elementary and secondary education, telecommunications funding, economic development, and fiscal measures. In conducting the study, representatives of Inteliant gathered information from the states of South Dakota and Wyoming, education groups, and economic development professionals.

The study of other states demonstrated that training is vital to the effective utilization of the statewide network. To provide that training, a substantial financial investment will be needed. However, education officials expressed great concern regarding the issue of state funding being available to school districts so that schools will have access to essential network services.

The study concluded that telecommunications spending by the state will increase, but efficiencies will be gained through the implementation of the new

statewide information network. Grants will be essential to obtain funds to assist in the implementation of the network. In addition to grant funds, the study concluded that a significant state investment by the Legislative Assembly will be needed.

The study found that because broadband access is essential to successful economic development efforts, the statewide network will be a vital asset to economic development at the local level. Additional technology factors that affect economic development are a technology-literate work force, cooperation with higher education and research institutions, and access to venture capital.

As a result of the study, Inteliant recommended that schools must be included in the statewide network. Inteliant also recommended that an entity be established to provide leadership for educational development in the utilization of technology. Inteliant recommended that training and programmatic areas be emphasized and that the state aggressively pursue outside funding sources in a cohesive, multiagency approach.

E-Rate Study

The federal government established the e-rate program in 1998. Under the program, funds are available for elementary and secondary schools and libraries to provide financial assistance for telecommunications services, Internet access, and internal connections. The study concluded that to capitalize on the maximum e-rate reimbursement, it is vital that the state determine the most advantageous manner for structuring contracts with vendors in the implementation of the statewide network. To maximize the e-rate reimbursement, Inteliant recommended the statewide network contract should be structured so that the vendor purchases equipment such as routers and includes the cost in circuit costs.

Education Funding Study

The funding of network services and video services for elementary and secondary education and the appropriate organizational structure for elementary and secondary education network operations was also studied. The study found that bandwidth demand by schools has been rising dramatically, and the cost of T-1 service has been cost-prohibitive for many school districts. The study also found that school officials continue to express concerns regarding potential actions by the Legislative Assembly with respect to the provision of network services.

Nexus surveyed school districts regarding the cost of frame relay T-1 service and found that the average cost is \$6,467 per year. However, annual costs are as high as \$29,000 per year for some school districts. The estimated cost under the new statewide network for ATM T-1 service is \$6,048 per year. The study concluded that the biggest winners under the new

statewide network will be the smallest schools, which generally are the highest-cost customers.

The Nexus study found that school districts desire greater distance learning capabilities, in part due to teacher shortages. Existing interactive video consortiums have proven to be valuable sources of information as the state makes decisions regarding the implementation of the video component of the new statewide network. The study found that there is not a unified voice for elementary and secondary education with respect to technology issues. Therefore, by restructuring the Educational Telecommunications Council and including representatives from SENDIT Technology Services, the Center for Innovation in Instruction, the Division of Independent Study, and various educational groups, and allowing the restructured council to hire a technology director, a coordinated approach could be taken to address school technology needs. Nexus recommended that the state provide a general fund appropriation to provide for a T-1 connection to each high school. The estimated one-time cost of each connection is \$11,000. The recommendation suggests that elementary schools that are not connected physically to a high school be connected to the network during the next biennium. Nexus recommended that the Legislative Assembly continue the current level of funding for the Educational Telecommunications Council to allow investment in interactive video. Nexus also recommended changing the structure of the Educational Telecommunications Council and authorizing the restructured council to set priorities for interactive video investment.

Because the Nexus report was presented at the last meeting of the committee before the Legislative Council meeting, the committee was unable to consider a bill draft implementing the recommendations of the Nexus study. However, because the committee is a statutorily created committee, the chairman of the committee requested the Legislative Council staff to prepare a bill draft that would restructure the Educational Telecommunications Council and place the new entity under the budget authority of the Information Technology Department. The chairman indicated that the committee would meet again before the convening of the 57th Legislative Assembly to consider the proposed bill draft.

COMMITTEE CONSIDERATIONS

The committee considered a bill draft that would have changed the deadline for agencies submitting information technology plans from January 15 to March 15 of each even-numbered year.

The committee considered a bill draft that would have exempted from the major project cost-benefit analysis requirements academic and research projects of institutions of higher education.

The committee considered a bill draft that consolidated the two bill drafts discussed above with other proposed amendments to NDCC Chapter 54-59 which were suggested by the Chief Information Officer. The bill draft required the Information Technology Committee to review the cost-benefit analysis of any major project of the State Board of Higher Education or any institution under the control of the board if the project significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project. The bill draft authorized the Information Technology Department to purchase equipment and software through financing arrangements. The bill draft also specified additional requirements that must be included in the Information Technology Department's business plan. The bill draft replaced the Statewide Wide Area Network Advisory Committee with a State Information Technology Advisory Committee that will be responsible for advising the Information Technology Department regarding statewide information technology planning, including providing electronic government services for citizens and businesses, developing technology infrastructure to support economic development and work force training, and developing other statewide information technology initiatives and policy. The bill draft also changed the deadline for agencies submitting information technology plans from January 15 to March 15 of each even-numbered year. The bill draft also clarified that information collected by the Information Technology Department from agencies regarding information technology standards, compliance reviews, and plans is exempt from open records requirements.

RECOMMENDATION

The committee recommends Senate Bill No. 2043 to require the Information Technology Committee to review the cost-benefit analysis of any major project of the State Board of Higher Education or any institution under the control of the board if the project significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project. The bill authorizes the Information Technology Department to purchase equipment and software through financing arrangements; specifies additional requirements that must be included in the department's business plan; replaces the Statewide Wide Area Network Advisory Committee with a State Information Technology Advisory Committee; changes the deadline for agencies submitting information technology plans from January 15 to March 15 of each even-numbered year; and clarifies that information collected by the Information Technology Department from agencies regarding information technology standards, compliance reviews, and plans is exempt from open records requirements.

JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies. Section 4 of House Bill No. 1002 directed a study of the impact of court unification on the judicial system and on the effective provision of judicial services to state residents. House Concurrent Resolution No. 3067 directed the Legislative Council to review and monitor the implementation of legislation enacted by the 56th Legislative Assembly which provided for the delivery of clerk of district court services through state funding and alternative methods. Senate Concurrent Resolution No. 4032 directed a study of the family law process in North Dakota with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods. The resolution further directed that in conducting the study, the Legislative Council consider conducting meetings with the Joint Family Law Task Force of the State Bar Association. Senate Concurrent Resolution No. 4043 directed a study of voter registration. The Legislative Council chairman authorized expansion of that study to include a study of voter residency requirements. The Legislative Council delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the Commission on Uniform State Laws under North Dakota Century Code (NDCC) Section 54-35-02. The Legislative Council chairman directed the committee to conduct public hearings on statewide primary and general election ballot measures. The Legislative Council also assigned to the committee the responsibility for statutory and constitutional revision.

Committee members were Senators Wayne Stenehjem (Chairman), Dennis Bercier, Joel C. Heitkamp, Judy Lee, Stanley W. Lyson, Carolyn Nelson, John T. Traynor, and Darlene Watne and Representatives Duane DeKrey, Lois Delmore, G. Jane Gunter, Kathy Hawken, Dennis E. Johnson, Scot Kelsh, Lawrence R. Klemin, Amy N. Kliniske, Kim Koppelman, John Mahoney, Shirley Meyer, and Phillip Mueller.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

COURT UNIFICATION STUDY - FUNDING OF THE CLERK OF DISTRICT COURT OFFICE

The committee was assigned Section 4 of House Bill No. 1002, which directed a study of the impact of court unification on the judicial system and on the effective provision of judicial services to state residents, and House Concurrent Resolution No. 3067, which directed the Legislative Council to review and monitor the implementation of legislation enacted by the 56th Legislative Assembly regarding the delivery of clerk of district court services through state funding and alternative methods.

Because of the similarity in the studies directed by this bill and this resolution, the committee combined the two studies into one comprehensive study.

Background

District Courts

The Constitution of North Dakota Article VI, Section 1, provides:

The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and such other courts as may be provided by law.

Article VI, Section 9, provides that the state is to be divided into judicial districts by order of the Supreme Court. In 1979 the Supreme Court divided the state into seven judicial districts. In each judicial district there is a presiding judge who supervises court services in the district. The duties of the presiding judge, as established by the Supreme Court, include convening regular meetings of the judges within the district to discuss issues of common concern, assigning cases among the judges of the district, and assigning judges within the district in cases of demand for a change of judge.

County Courts

In 1981 the Legislative Assembly enacted legislation providing for one county court in each county instead of the multilevel system of county courts, county justice courts, and county courts of increased jurisdiction as existed at that time. The legislation also provided that county judges had to be law-trained and full time and provided for the assumption by the state of many district court expenses.

County courts had jurisdiction over civil cases involving \$10,000 or less; criminal misdemeanors, infractions, and traffic cases; small claims cases involving \$3,000 or less; probate; testamentary, guardianship, and mental health commitment proceedings; appeals from municipal court; and any other cases as were assigned by the presiding district judge of the judicial district in which the county was located.

Court Unification

In 1991 the Legislative Assembly unified the court system through elimination of county courts and the creation of additional district court judgeships from county court judgeships. In 1991 there were 53 district and county judges. Under unification, the law provided that the total number of district court judgeships must be reduced to 42 before January 1, 2001. The Supreme Court began eliminating judgeships, and by January 2, 1995, the primary implementation date for consolidation of trial courts, the number of judgeships was reduced to 47. As of November 2000, the number of judgeships has been reduced to 43, with one additional judgeship to be eliminated at the end of 2000.

Office of Clerk of District Court

Historically, the clerks of court have been elected county officials whose salaries are set by state law but are paid by the county. The duties of the clerk are prescribed by state law, and the duties of the clerk are essentially performed for the district court. In 1989 the Legislative Assembly enacted legislation that provided counties the option of seeking state funding for the clerk of district court. The legislation, codified as NDCC Section 11-17-11, provides that "[t]he board of county commissioners of any county may initiate the option to transfer responsibility for funding for the clerk of district court to the state by the filing of written notice to the state court administrator"

In 1997 the Legislative Assembly expressed its intent to provide for the state funding of clerks of court by stating in Section 6 of 1997 Senate Bill No. 2002 that "the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts."

In 1999 the Legislative Assembly enacted legislation to provide for the state funding of clerk of district court services. The legislation, codified as NDCC Chapter 27-05.2, provides for the transfer of the funding for clerk of district court services to the state effective April 1, 2001. The legislation defined clerk of district court services as "those duties and services, as provided by statute or rule of the supreme court, that directly serve the judicial system and the provision of effective and efficient judicial services to the public." The legislation provided that the options available to a county regarding state funding of clerk of district court services depended upon the number of full-time equivalent (FTE) positions the Supreme Court determined to be necessary to provide adequate clerk of district court services. Under the legislation, a county in which the Supreme Court determined that at least five FTE employees are necessary would have the option of state-funded clerk of court services or clerk of district court services provided at the county's own expense; a county in which the Supreme Court determined that one or more, but fewer than five, employees are necessary may opt for state-funded clerk of district court services, contract with the Supreme Court for clerk of district court services, or provide the services at the county's own expense; and a county in which the Supreme Court determines that less than one FTE is necessary may either contract with the Supreme Court for clerk of district court services or provide the services at its own expense. The legislation further required each board of county commissioners to notify the Supreme Court of its election to provide clerk of district court services, of its consent to the elected clerk of court and designated staff to become state employees, or of its election to enter an agreement with the Supreme Court to provide funding for clerk of district court services by April 1, 2000.

Testimony and Committee Considerations

The committee received testimony and reviewed extensive information submitted by the Supreme Court with regard to the implementation of the 1999 legislation regarding the delivery of clerk of district court services through state funding. The committee also received testimony on impact of court unification on the judicial system and on the effective provision of judicial services to state residents. The committee's considerations centered on five issues--implementation of the 1999 clerk of district court services legislation; reduction of judgeships; judicial salaries; juvenile drug courts; and the central legal research program.

Implementation of 1999 Clerk of District Court Services Legislation

The committee received testimony from the Supreme Court regarding implementation of the 1999 legislation that provided for state funding of clerk of district court services. Eleven counties have requested the state to fund and operate clerk of district court services; three counties have elected to pay for clerk of district court services without funding agreements with the state for reimbursement; and one county did not make an election within the time set by statute. As a result, that county will operate the clerk of district court office at its own expense. The remaining 38 counties agreed to provide clerk of district court services in exchange for reimbursement from the state in accordance with an agreed formula.

The committee also received testimony regarding the number of FTE positions authorized using a 600 filings per FTE formula, adjusted to include administrative traffic cases. The testimony indicated that the funds appropriated by the 56th Legislative Assembly are not sufficient to operate the state clerk of district court office and meet funding agreement obligations from April 1, 2001, through June 30, 2001.

The Supreme Court contracted with the National Center for State Courts to conduct a workload assessment study. A broad-based committee consisting of 18 clerks and deputy clerks representing all sizes of offices participated in the study. Every task in clerk of district court offices was analyzed, weighed, and discussed. The results of the study will be used in the budget request to the Legislative Assembly for FTE positions in the next biennium in state-operated offices and as a basis for funding agreements for counties that have selected that option.

The committee received testimony that many questions have been raised concerning who will handle restitution and the preparation of criminal judgments. Current practice varies from county to county. In some counties, the collection of restitution and the preparation of criminal judgments are performed by clerks of district court, and in other counties these duties are performed by state's attorneys. According to the testimony, the

Supreme Court will address that issue in the form of a rule that proposes both functions become clerk of district court functions.

The testimony also included a review of the hiring procedures being implemented in the state-funded offices. The law provides that elected clerks of district court in state-funded offices will automatically become state employees on April 1, 2001. The remainder of clerk of district court staff will be selected from county-paid staff in offices being funded by the state. Eligible deputy clerks will receive application forms and instructions. A series of briefings were scheduled in the state-funded offices to explain pay issues and available state benefits and to answer questions. Anyone who was interested in a position with a state-funded office was required to submit an application to the presiding judge of the judicial district. The presiding judge will make the decision concerning who will be hired after consultation with the clerk of district court and others as appropriate. The decisions are to be based on job performance and on a best-qualified basis. Staffing is expected to be finalized by February 2001, with employment starting on April 1, 2001. According to the testimony, the clerks and their staffs have been very cooperative and willing to work with the Supreme Court on implementation of the 1999 legislation.

The committee makes no recommendations with respect to implementation of the 1999 clerk of district court services legislation.

Reduction of Judgeships

The Supreme Court reported that the reduction in the number of judgeships is on schedule. Before 2000, the reductions in district court judgeships were made by either the resignation or death of a judge. With the number of judgeships reduced to 43, a sitting judgeship had to be eliminated to make the final reduction to 42 by January 1, 2001. The judge whose position is to be eliminated was required to be notified of the decision by January 1, 2000, and the position to be eliminated was required to be one that would be up for election in November 2000. There are 11 positions up for election in 2000, and all were considered for elimination with the exception of one position in the Southeast Judicial District. The Supreme Court conducted a series of judgeship position elimination hearings and reported that the judgeship to be eliminated was one located in the Southwest Judicial District.

Judicial Salaries

The committee received testimony from a district judge concerning the salaries of judges and justices in North Dakota and how those salaries compared to similar judicial positions in other states. In the late 1970s, North Dakota judges ranked above the national average and the national median for salaries. As of July 1, 1999, the national average for trial court judges was about \$101,000, and for court of last resort judges

the national average was about \$112,000. North Dakota district judges were paid approximately \$77,000 and North Dakota Supreme Court justices were paid approximately \$83,000. In 1999 North Dakota district judges ranked 50th in salary, and North Dakota Supreme Court justices ranked 49th in salary. In addition, the average district judge salary for the three states bordering North Dakota was \$87,200. The average salary of district court judges among states of less than one million in population was \$93,500. In states with a population of less than that of North Dakota, the salaries ranged from a high in Alaska with a salary of \$103,000 to a low in Wyoming of \$83,700. South Dakota's equivalent of North Dakota's district judges were paid \$88,600 and South Dakota Supreme Court justices were paid about \$93,000. If North Dakota judicial salaries had kept pace with inflation, the salary for a district judge would be approximately \$98,000.

The testimony indicated that adequate salaries are important for attracting the most qualified candidates for the job, and that an ambitious, competent, and qualified judiciary is essential to economic development. The testimony indicated that lawyers do not seek judgeships for the money but rather do so for the ability to perform public service. The testimony further indicated that judges believe that in reducing the size of a branch of government and in continuing to deliver services in a timely manner, the judiciary has demonstrated that government can be both leaner and more responsive. Consequently, judges and justices should be fairly compensated for the work they do. The committee was urged to either recommend legislation or to endorse the idea of a fair and equitable wage for North Dakota judges and justices.

Several members of the committee raised concerns about the committee's endorsement or recommendation of judicial pay equity legislation and stated that while the judicial salary issue is an important one, the entire state budget must be considered before judicial pay equity legislation can be addressed.

The committee makes no recommendation regarding the judicial salaries issue.

Juvenile Drug Courts

The committee received testimony regarding implementation of the juvenile drug court pilot projects in the state. The testimony indicated a need has arisen for juvenile drug courts in the state because the traditional drug offense process for dealing with juvenile drug offenders has been unsuccessful. From 1995 to 1998, the number of juvenile controlled substance violations in the state had doubled. Alcohol violations during that same time period increased from 1,700 to 2,700. A survey of North Dakota high school students indicated that 61 percent had experimented with alcohol. The national percentage is 51 percent.

In 1989 the first drug court system for adults was developed in Miami, Florida. In 1995 the idea was

expanded to include juveniles. As of February 2000, there were 81 juvenile drug courts across the country and 65 more are being planned. The juvenile drug courts have been successful in reducing recidivism rates and have had an increased rate of retention in treatment and in the success of that treatment. In 1998 the Juvenile Policy Board, an advisory board to the North Dakota Supreme Court, organized a study committee to determine whether the resources were available in North Dakota to operate a pilot juvenile drug court and to determine whether a need existed for a juvenile drug court in the state. The advisory committee concluded that the resources were available and that a need existed for a juvenile drug court in the state.

In May 2000 juvenile drug court pilot projects were established in Grand Forks and Fargo. By September 2000, about 30 juveniles were participating in the program at the two sites. The criteria used to determine whether a juvenile drug offender is eligible for the program includes that the juvenile be between 14 and 18 years of age; have no prior felony level adjudication; have no previous dangerous antisocial behavior; have no previous referral to the drug court; have no prior or pending charges of selling or manufacturing controlled substances; and the juvenile must admit to the offense and complete a drug or alcohol assessment. The juvenile drug court team is composed of a judge, a juvenile court supervisor, a state's attorney, a defense counsel, a school representative, and a treatment coordinator. The team decides who is eligible for the program, designs the program, and makes weekly reports to the judge. The juvenile remains in the program for 6 to 12 months. The program, which includes weekly drug court hearings before the juvenile drug court judge, provides sanctions for noncompliance and incentives for compliance. Parental involvement and community service are requirements of the program.

The committee received testimony that the two district judges who are operating the drug court programs in Grand Forks and Fargo have added the drug court responsibilities to their schedules without taking any reduction in their caseloads. The first year of the program is being funded by a planning grant, and additional grants will be sought to fund the drug court for an additional two years. It was reported that there may be a need to seek a legislative appropriation if the grant requests are unsuccessful.

The committee makes no recommendation regarding the juvenile drug court program.

Central Legal Research

The committee received testimony regarding the funding of Central Legal Research at the University of North Dakota School of Law in Grand Forks. Central Legal Research's mission is to answer the research needs of judges, prosecutors, and court-appointed defense attorneys in an essentially rural state in which legal resources are at a premium. Each year the Central

Legal Research staff researches and writes about 80 to 100 legal memoranda and responds to numerous other requests for less complex research assistance. The Central Legal Research staff includes six second- and third-year law students, a program director, and a certified legal assistant. The testimony indicated that the memoranda give lawyers and judges foundational assistance for the writing of legal briefs and the making of judicial decisions. For most of the program's 22-year history, the program was funded as part of the School of Law budget. During the 1999 legislative session, however, no funds were earmarked in the higher education budget for Central Legal Research. The Legislative Assembly approved an \$80,000 appropriation for Central Legal Research in the 1999-2001 biennial district court budget. It was reported that although this level was less than half of the appropriation Central Legal Research received in the previous biennium, it meant the branch of government that benefits the most directly from the program's services, the court system, had assumed a share of the funding responsibility. It was noted by several committee members that the services provided by Central Legal Research are valuable, especially for those attorneys and state's attorneys in remote areas of the state.

The committee makes no recommendation regarding the funding of Central Legal Research.

FAMILY LAW PROCESS STUDY

Background

North Dakota Century Code Title 14 contains the majority of the statutes dealing with domestic relations or family law in the state. Title 14 includes those chapters that deal with marriage, divorce, annulment, separation, custody and visitation, child support, adoption, alternative dispute resolution, and domestic violence. Another area of the code which includes statutes related to the family law process is Chapter 27-20, the Uniform Juvenile Court Act.

In 1999 11,151 of the 31,429 (or 35.5 percent) of the civil case filings in district court involved domestic relations cases. In addition, 2,313 juvenile cases were filed, representing about 3.7 percent of the total district court caseload. Within the domestic relations category, child support actions made up 53.4 percent of the cases; divorce, 24.8 percent; paternity, 8 percent; adult abuse, 10.1 percent; and custody and adoption, 3.4 percent. Adult abuse filings increased slightly in 1999 to 1,123, compared with 1,086 filings in 1998. Divorce filings decreased in 1999 with 2,774 filings compared to 3,044 in 1998, and child support actions decreased from 6,784 in 1998 to 5,952 in 1999.

Joint Family Law Task Force

In 1995 the North Dakota Supreme Court, at the request of the State Bar Association of North Dakota, established a task force to study family law issues. The

Joint Family Law Task Force consisted of members appointed by the State Bar Association of North Dakota and by the Supreme Court. The task force was assigned to review family law procedures and related matters presently used by the judicial system in North Dakota; evaluate the need for changes to ensure accessibility to the system and responsiveness of the system; assess the impact of court unification on the process; and evaluate the effectiveness of the process for clients, attorneys, and the courts.

The Joint Family Law Task Force was further directed to review dispute resolution alternatives for potential application in the family law system and the need for public education programs dealing with the impact of divorce and separation on the family unit. Finally, the task force was directed to consider two problematic areas raised by members of the bench and bar--domestic violence in custody cases and the use of guardian ad litem. The group completed its directives in April 1998 and made recommendations regarding parent education; postjudgment demand for change of judge; statutory review; domestic violence as a factor of custody; and alternative dispute resolution.

The Joint Family Law Task Force completed its work in April 1998 and concluded that the task force had completed as many of its goals as were practicable. The task force, in its final report, stated that the scope of what remains will require a cooperative effort among the judiciary, the State Bar Association of North Dakota, and the Legislative Assembly. The task force agreed to serve as an ad hoc group, ready to respond to issues raised by legislative interim committees and the Legislative Assembly.

Subcommittee and Working Groups

Senate Concurrent Resolution No. 4032 called for a cooperative study of family law issues between the Legislative Council and the Joint Family Law Task Force of the State Bar Association of North Dakota. A subcommittee of 12 committee members and nine members of the Joint Family Law Task Force was formed to study the family law issues. The subcommittee identified four areas of study--property division and spousal support; mediation; guardians ad litem; and statutory review. The subcommittee was further divided into four working groups. Each of the family law subcommittee's four working groups held a series of meetings either in person or by conference call. In some instances, bill drafts were reviewed, in others, recommendations were considered. The following is a summary of the conclusions of each working group.

Property Division and Spousal Support

The Property Division and Spousal Support Working Group identified three issues for study--disclosure of marital assets; establishment of guidelines, or other measures of certainty, for spousal support; and

exclusion of premarital property, inherited property, and gifts from marital property. The study of the property division and spousal support issues included a survey of the respective laws in the other 49 states, while the disclosure discussion was based mainly on the California law.

The working group's concerns regarding the complete disclosure of marital assets were the premise for the discussions regarding the California disclosure law. Working group members questioned whether legislation similar to that passed in California would rectify problems associated with parties who conceal or decide not to candidly disclose information regarding marital assets.

California passed its disclosure law in 1993. The law was enacted to ensure fair and honest reporting of marital assets during the dissolution process. A party failing to comply with the disclosure requirements may be subject to a redistribution of the previous property division order as well as being required to pay the other side's attorney's fees and costs. The group discussed several issues concerning the implementation of a similar law in North Dakota, and noted in particular that disclosure laws would shift the burden from the victim to the perpetrator of nondisclosure.

The working group decided the disclosure requirements were largely procedural in nature and, therefore, should be considered as a potential rule. The working group concluded the number of cases involving disclosure issues was probably small while the impact of a disclosure rule on cost and the potential for delay would be great. The group also determined that Rule 60 of the North Dakota Rules of Civil Procedure, dealing with relief from a judgment or order when new information is obtained, provides relief similar to the disclosure law. Based on those findings, the working group decided to forego any further work on a disclosure law.

The working group also discussed possible guidelines for spousal support. The amount of spousal support awarded in a divorce is often unpredictable. As in most states, spousal support in North Dakota is governed by broad statutory language and case law. The working group's mission in this area was to determine if a more predictable and consistent solution could be discovered or developed. Based upon a review of information regarding statutes from other states, it was concluded that while some states included arbitrary time limits for spousal support or establish a "years of marriage" demarcation for purposes of setting support, no state has adopted a comprehensive and fair set of guidelines.

One guideline identified and examined by the working group was that adopted by the Superior Court of Arizona in Maricopa County. The Maricopa County guidelines apply to marriages of at least five years and included some financial restrictions regarding the postdivorce income of the two parties. If the parties met the threshold, a mathematical formula for calculating spousal

support is used. The guidelines, however, emphasize that the guidelines do not create a presumption but rather serve as a starting point for discussion, negotiation, or decisionmaking.

The working group expressed concern about the limited use of the Maricopa County guidelines and discussed the potential for using them on a limited basis in a pilot project-type setting to determine how well the guidelines would work. The judges on the working group suggested distribution of the guidelines to the Council of Presiding Judges for purposes of considering the development of a voluntary program allowing judges to use the guidelines. Under this program, judges could compare outcomes using the guidelines versus the outcomes under established case law. As data is collected regarding the outcomes, the working group believed the court system would be in a better position to determine whether spousal support guidelines provide a fair and reasonable alternative for the calculation of spousal support.

The most controversial topic discussed by the working group was that of excluding premarital property, inherited property, and gifts when dividing marital property. In North Dakota, all property owned by the parties, regardless of when obtained or how titled, is considered to be the marital property of the parties and is subject to property division. After reviewing how other states deal with property division, the group determined that changing the law to allow the exclusion of premarital property was too great a change. Consequently, the working group proposed a bill draft providing for the exclusion of inherited property and gifts as long as the property meets the definitions set forth in the draft.

The working group debated whether the present method of division should be changed because the exclusion of inherited property and gifts represents a dramatic shift from the present system and will eviscerate much of the existing case law dealing with property division. The working group concluded that the proposal would open the door for a new set of court interpretations regarding what constitutes inherited property and gifts and that the result may be a very steep learning curve for the court, the bar, and the public. In addition, concern was raised regarding the impact of the proposal on litigation costs. Proponents argued that the present practice creates unfair results to litigants, especially in situations involving segregated inheritance. While the group did not endorse the proposed language on property division, it did agree to forward the proposal to the full committee for its review and consideration.

As the working group discussed changes to the property division portions of NDCC Section 14-05-24, it was recognized that the present section included language regarding spousal support and a requirement that parents provide support to their children. The group believed the language was confusing and not germane to the section. Consequently, the group recommended removing the spousal support language from the section

and creating a new section on spousal support and removing the sentence regarding child support from the section and inserting it into NDCC Section 14-09-08, dealing with the parents' mutual duty to support children. The changes are included in a bill draft recommended by the Statutory Review Working Group.

The recommendations and findings of the Property Division and Spousal Support Working Group were:

- Encourage the Council of Presiding Judges to implement an informal procedure whereby the Maricopa County guidelines would be used to calculate spousal support and the results of that calculation should be compared to the actual spousal support awarded by the court.
- Forward to the full committee for its consideration the amendments to NDCC Section 14-05-24 regarding division of gifted and inherited property.
- Create a new section regarding spousal support that includes amended language from Section 14-05-24.
- Incorporate language dealing with child support from Section 14-05-24 into Section 14-09-08.

Mediation

The history of developing a court-annexed alternative dispute resolution (ADR) program in North Dakota is complex. The Mediation Working Group identified two tasks--review statutes and rules from other states and analyze court-annexed ADR and funding issues--and two issues--the availability of mediation services to low-income families and the potential for creating qualifications for family law mediators.

As an initial step, the working group reviewed the final report of the Supreme Court and State Bar Association's Joint Dispute Resolution Committee. This report made several recommendations to the Supreme Court regarding the implementation of case settlement conferences similar to the procedure utilized by the federal court and requiring earlier judicial involvement in cases. The working group was informed the Supreme Court was in the process of developing new rules that provide for case settlement conferences using mediation techniques and using members of the judiciary, establish a court roster of trained neutral mediators, and establish training requirements. The working group recognized that any court-annexed mediation or ADR program involving private neutral mediators would require the Supreme Court to find a funding source. Thus, the working group concluded that the option of using judges to handle mediation may provide the most cost-effective system. Several members raised concerns, however, regarding the use of judges as neutral mediators, and emphasized that the Supreme Court should explore options for encouraging the use of private mediators.

With regard to the availability of mediation services to low-income families, the working group received

information from the Conflict Resolution Center in Grand Forks. The center has implemented a sliding fee scale to accommodate the indigent population. As a result of this discussion, the State Bar Association of North Dakota also adopted a sliding fee scale for mediation services and incorporated the fee into its reduced fee program. The State Bar Association, in conjunction with Legal Assistance of North Dakota, also provided family law mediation training to 39 attorneys. Those attorneys have each agreed to provide either mediation services under the State Bar Association's volunteer lawyer program or the reduced fee program.

The working group also discussed several related issues, including a code of ethics for mediation in family law, the need for qualifications, and the maintenance of a roster of qualified mediators. The working group also addressed discipline issues. A draft of a code of ethics for mediation was developed with the intent that it be forwarded to the Supreme Court for its consideration.

The Mediation Working Group's recommendations were:

- Encourage the Supreme Court to explore options for establishing a court-annexed mediation program.
- Encourage the Supreme Court to consider adopting a code of ethics for mediators.

Guardian Ad Litem

One mission of the Guardian Ad Litem Working Group was to discover whether other sources of funding were available to fund the training requirements contained in Rules 8.6 and 8.7 of the North Dakota Rules of Court, and to determine whether other resources were available to provide the services provided by child custody investigators and guardians ad litem. In certain family law cases, judges may order a child custody study to help the court determine the best interest of the children. Under the new rules, these investigations would be conducted by a child custody investigator. In instances in which the court is concerned about the child's best interest being adequately represented during a child custody case, the judge may order an attorney to serve as the child's guardian ad litem.

Under the new rules, both child custody investigators and guardians ad litem are required to attend an initial training session and to attend six hours of training each subsequent year. Since the services are of immeasurable value to the court system, the working group concluded the Supreme Court should consider ways in which to include the cost of training in its budget.

A secondary issue associated with sources of funding was the availability of qualified child custody investigators in the rural areas. Discussions on this issue were held with representatives from third-party providers and representatives from the Department of Human Services. Initially, the working group was

seeking information regarding existing programs that could be tailored to meet the needs of the court program, or child custody investigation services that could be provided through regional human service centers. In response to the former, the third-party providers expressed concerns about training issues and administration of the services. The third-party providers also questioned the potential for liability for the services rendered. While there may be some interest in the future as the role of the investigators evolves, the third-party providers were hesitant to commit to providing resources.

The potential liability of a child custody investigator and guardian ad litem in conducting a study for the court or representing a child was also discussed. Concerns were raised about a recent lawsuit filed against a custody investigator. While there may be protection under current statutes for individuals conducting work on behalf of the court, the working group determined a bill draft adding immunity language to the section in the North Dakota Century Code enabling the court to appoint a guardian ad litem or child custody investigator was appropriate.

Discussions also were held with representatives of the Department of Human Services regarding the availability of support from regional human services centers. Several issues were raised by the representatives including present workloads of social workers at the regional centers. In light of the coordination required with child protection and other services, the department contended there may be a negative impact on the availability of staff and conflicts of interest would exist because the staff is often involved in working with the families on other issues. Consequently, the Department of Human Services was hesitant to suggest that their staff could provide child custody investigator services.

The working group concluded its study by noting that it seems as if several agencies are providing similar services to different, or sometimes the same, groups without any coordination. Several members of the working group speculated that the Supreme Court and the Department of Human Services should consider exploring the possibilities of coordinating services and resources in the area of child custody investigators. The working group believed a need exists to have a comprehensive study that would examine the common interests of the two entities, the conflicts, and the available resources as applied to the area of child custody investigations.

The recommendations of the Mediation Working Group were:

- Consider the inclusion of an immunity clause in NDCC Section 14-09-06.4.
- Encourage the Supreme Court and Department of Human Services to conduct a joint study exploring the possibilities of coordinating

services and resources in the area of child custody investigators.

Statutory Review

A survey mailed to the members of the family law section of the State Bar Association of North Dakota requesting suggestions for needed changes to NDCC Title 14 identified the following areas as being in need of change--consolidate Chapter 14-04 (Annulment), Chapter 14-05 (Divorce), and Chapter 14-06 (Separation); clarify that custody applies to separation and divorce; consider a new definition or some clarification to the definition of "habitual intemperance"; and reenact the penalty for removing a child from the state in violation of a custody order.

As the Statutory Review Working Group reviewed NDCC Chapter 14-04 dealing with annulments, there was consensus that Section 14-04-04, which deals with custody, should be amended to incorporate the best interest factors, as defined in the divorce chapter, into the annulment process. The present standard in the annulment chapter includes archaic language referring to fault. The working group discussed that the fault standard has not been recognized in custody for some time, and the group believed consistency dictated a change to the best interest factors.

The working group also recognized the need to make several amendments to NDCC Chapter 14-05 (Divorce) to incorporate provisions from the separation chapter. This was done in light of the working group's consensus that it is unnecessary to have separate chapters for separation and divorce because the protocols for the division of property, custody determination, and child support are the same for all three proceedings. Also within Chapter 14-05, the working group discussed updating the definition of "habitual intemperance."

The Statutory Review Working Group noted the criminal penalty for intentionally removing a child from North Dakota in violation of a custody order had been inadvertently removed from the North Dakota Century Code when Chapter 14-14.1 (Uniform Child Custody Jurisdiction Act) was enacted in 1999. The working group agreed this was an oversight and recommended the addition of a new section to Chapter 12.1-18 (Kidnapping).

The recommendations of the Statutory Review Working Group were:

- Amend NDCC Section 14-04-04 to incorporate the best interest factors into the section.
- Consolidate the chapters dealing with divorce and separation into one chapter and remove archaic terms and language in the new chapter.
- Reenact the penalty for intentionally removing a child from the state in violation of a custody order into NDCC Chapter 12.1-18.

Committee Considerations

Upon the conclusion of the working groups, the committee received information regarding the findings and recommendations of each group.

The Property Division and Spousal Support Working Group forwarded to the committee a bill draft regarding the division of gifted or inherited property. The committee received testimony that under this bill draft, the burden of proof should be shifted to the party who wants the gifted or inherited property to be divided. The testimony indicated that the burden may be shifted to the party least able to financially bear that burden. The testimony further indicated that the bill draft would result in more litigation at the appellate level. Several committee members expressed concerns that the goal of the bill draft was not necessarily to create less litigation but to provide for division of property that is fairer than under current law.

Recommendations

The committee recommends Senate Bill No. 2044 to provide that property acquired by an individual spouse through inheritance or by gift, if titled and maintained in the sole name of the donee spouse, is the property of that party and is not subject to division.

The committee recommends Senate Bill No. 2045 to provide for the appointment of child custody investigators and provide immunity for child custody investigators and guardians ad litem.

The committee recommends Senate Bill No. 2046 to consolidate the chapters dealing with divorce and separation into one chapter, to reenact the penalty for intentionally removing a child from the state in violation of a child custody order, to apply the best interest standard to the annulment process, and to remove and update archaic language in the domestic relations statutes.

The committee also recommends the nonlegislative recommendations of the working groups.

VOTER REGISTRATION AND RESIDENCY STUDY

Senate Concurrent Resolution No. 4043 directed a study of voter registration. The Legislative Council chairman authorized expansion of the study to include a study of residency requirements.

Background

North Dakota is the only state in the United States which does not require some form of voter registration. A number of states, however, do provide for same day registration.

The North Dakota Legislative Assembly enacted a bill requiring voter registration in 1895. The bill provided for voter registration two weeks before every general or municipal election in all cities and villages exceeding 1,000 in population. Voters who failed to have their names properly registered on the first day were

permitted to have their names added by the local election board, which also served as the registration board, one week before the election. Even then, an unregistered voter could still appear at the polls and vote by filing an affidavit supported by the oath of a householder or registered voter attesting that the prospective voter was in fact a resident entitled to vote.

The North Dakota Legislative Research Committee, predecessor of the Legislative Council, studied the state's voter registration laws during the 1949-50 interim. As a result of the study, Senate Bill No. 61 was introduced during the 1951 legislative session. The bill repealed mandatory voter registration and left registration optional with the governing boards of the municipalities. The 1951 Legislative Research Committee report stated "[t]he present system is cumbersome and of limited effect since it does not apply to primary elections, usually the most important elections in the state." A report issued in 1974 by the Bureau of Governmental Affairs entitled *Fraud-Free Elections Are Possible Without Voter Registration* explained:

At that time, North Dakota was a 1-party Republican state in which major electoral contests occurred in the June party primaries between two major factions of the Republican party. Typical of 1-party states, the final decisions were really being made in the primaries. Apparently, the study committee felt there was so little merit to continuing registration that no serious consideration was given the idea of including the primary elections in the registration system.

Senate Bill No. 61 passed unanimously in the Senate and passed in the House with a vote of 95 to 5. Since that time, NDCC Section 40-21-10 has provided for optional registration of voters within municipalities.

In the majority of the legislative sessions between 1957 and 1975, unsuccessful attempts were made to pass legislation again requiring mandatory statewide registration. In 1975 a bill requiring registration passed by a vote of 56 to 41 in the House and 27 to 19 in the Senate. The Governor vetoed the bill and in the communiqué to the Secretary of State said:

House Bill 1101 requires the registration of voters in North Dakota. Initial registration would be conducted at both the primary and general elections in 1976. Subsequently, registration would be open until five days prior to any statewide primary, general, or special election. The bill provides that the registration would be permanent, although names would be purged from the registration lists if a person did not vote in two consecutive general elections. Such registration lists would be available to the public, but only for political and not for commercial purposes.

This legislation offers no improvement in our election law. Rather, it appears to be a significant movement away from securing more active participation of the electorate. The low percentage of eligible voters who actually vote clearly indicates we do not need complicated registration legislation which will tend to reduce even further the number of citizens who vote.

A need for voter registration could exist if there were irregularities or fraud in North Dakota elections. There has been no indication or evidence of such election problems to justify this legislation.

We need legislation to make the ballot more accessible to the citizen. We do not need additional roadblocks to keep voters from the polls. Therefore, I veto House Bill 1101.

North Dakota Voter Registration Laws

North Dakota Century Code Section 40-21-10, which allows a city to institute voter registration, provides:

The governing body of any city may require the registration of voters in any election held or conducted within the municipality at such time and place or places as the governing body may designate.

North Dakota's election laws are contained in NDCC Title 16.1, and one of the 18 chapters in that title, Chapter 16.1-02, is reserved for elector registration.

Testimony and Committee Considerations

The committee received testimony and reviewed extensive information provided by the Secretary of State's office with regard to voter registration and residency requirements. The committee's consideration centered on three issues--voter registration and the National Voter Registration Act; residency requirements; and challenged voters.

Voter Registration and the National Voter Registration Act

Representatives of the Secretary of State's office and of other interested organizations provided the committee with information regarding the National Voter Registration Act and on implementation of voter registration in North Dakota.

The National Voter Registration Act of 1993 [42 U.S.C. § 1973gg] requires that individuals be given an opportunity to register to vote in elections for federal office when applying for or renewing a driver's license or other personal identification document issued by a state motor vehicle authority; when applying for or receiving certain types of public assistance and other services; by mail, using either an appropriate state form or a national form, and at a military recruiting office. The Act prohibits

the purging of voters' names from voter registration lists solely for failure to vote and requires a program for positively confirming the accuracy and currency of the registration lists. The Act sets out very specific and detailed requirements for the maintenance of voter lists that require multiple confirmation mailings in most cases. The Act provides for certain "fail-safe" voting mechanisms to ensure that the right to vote prevails when a voter's name is eliminated or not included on a voter registration list. According to the testimony, these fail-safe voting procedures were incorporated under the principle that once registered, a voter should remain on the voter registration list as long as the individual remains eligible to vote in that jurisdiction. The Act requires states to report to the Federal Election Commission the impact of administering elections according to the requirements of the Act. In addition to the requirements of the Act, federal legislation passed in 1998 requires all institutions of higher learning to make a good-faith effort to offer voter registration to students enrolled in a degree or certificate program. According to a preliminary listing provided by the Federal Election Commission, there are 27 North Dakota institutions that would be impacted.

In addition, the committee received testimony that North Dakota, which does not have voter registration, is one of six states that is exempt from complying with the Act. Only those states that had "same-day" registration in place at the time of the enactment of the Act were permitted to continue with that type of registration. It was reported that if North Dakota implemented voter registration, it would immediately fall under the requirements of the Act.

The committee received testimony in support of implementing voter registration in North Dakota. According to the testimony, voter registration would protect the integrity of the voting process before the votes are cast. The testimony further indicated that voter registration would keep people voting in the proper district, would eliminate multiple voting by one person, would provide a list of eligible voters for election boards, and would help eliminate voter fraud. It was argued that a voter registration system would not have to be complicated, and with an adequate publicity campaign, the citizens of the state would be able to adjust to the change. It was suggested that a simple and easy registration system like the one used in Minnesota could be implemented. While it was acknowledged that voter registration would not cure all voting problems, it would help resolve some voter fraud concerns.

Other testimony indicated that the estimated cost of implementing a voter registration system is approximately \$800,000, and the continued maintenance of the system would be costly to both the state and the counties. According to the testimony, if North Dakota implemented a voter registration system, the simplified registration procedures used by Minnesota could not be used in North Dakota. Minnesota is not subject to the Act because the state is one of the six states exempted

from complying with the Act. If North Dakota would institute voter registration, it would be subject to the Act. Regarding incidents of voter fraud, the testimony indicated that few, if any, cases of voter fraud have been brought to the attention of a state's attorney and that there is more concern over whether people are voting in the proper precinct than over voter fraud.

The committee considered a bill draft that would have established a county-based voter registration system. The bill draft provided that electors would have to be registered at least 30 days before an election to be entitled to vote. The bill draft included procedures for registering electors and provided that the elector may register when applying for or renewing a driver's license or when applying for public assistance and the bill draft included the registration provisions required by the National Voter Registration Act. Several committee members indicated that there has not been a public outcry for voter registration, that it would be costly to the state, and that it would make the state subject to the federal voter registration laws. Other committee members believed the issue was important and should receive full legislative consideration.

Residency Requirements

The committee received testimony from representatives of the Secretary of State's office on the residency requirements of voters in North Dakota. Residency is determined based on the rules provided in NDCC Section 54-01-26. Under that section, a residence is the place where a person returns when not called elsewhere for work and other temporary purposes, and it is the place where a person returns in times of rest; a person can only have one residence, and a residence cannot be lost until another is gained; and a person's residence can be changed only by the union of act and intent. According to Section 16.1-01-04, a person may establish a new voting residence by residing in a new precinct for at least 30 days and by intending it to be the person's residence. According to the testimony, sometimes a person's actions and intent clearly coincide, making the place of voting residence much more evident. Oftentimes, however, a person's actions and intent do not appear to clearly coincide, making the place of the person's voting residence unclear and questionable.

The testimony indicated that election officials and members of election boards are not authorized by law to determine whether a person's actions and intent clearly coincide when determining whether a person is a resident of a precinct, and thus qualified to vote at the precinct. Election officials, members of election boards, and challengers are authorized, however, to challenge a voter when they know or have reason to believe a voter is not a qualified elector or resident of the precinct. Determining a person's voting residence generally requires findings of fact that may only be determined through an investigative process and potentially through court proceedings.

The committee also received testimony regarding the voter residency of other states. It was reported that many states have a definition for residency that is unique to voting, and in some cases, for holding public office. This residency definition does not necessarily carry over for determining residency for other purposes such as taxes, tuition, and licenses. Many states, it was reported, specifically address military and college students in their definitions of residency and also specifically address those who are temporarily out of their election jurisdictions for work and government service or those whose businesses and homes are in different election jurisdictions. A number of states assign residency based upon where a person's family is located and other states tie residency to a "domicile," "fixed" permanent habitation or abode, or "principal" home. The testimony also indicated some states do not define residence and leave residency determinations up to the courts. One state, it was reported, ties residency to where a person "habitually sleeps." A common thread throughout residency statutes of other states is that residency is a union of act and intent.

Challenged Voters

The committee received testimony regarding the procedures used by election officials when a person's eligibility to vote in a particular precinct or election is in question. Under NDCC Section 16.1-05-06, members of an election board and poll challengers may challenge the right of anyone to vote who they know or have reason to believe is not a qualified elector. The section provides that the election board member or poll challenger may request that the challenged voter execute an affidavit that the challenged person is a legally qualified voter of the precinct. Several members of the committee inquired as to whether a person's Social Security number could be used as a means of identifying voters. Although federal law prohibits the Social Security number from being used as an identifier for election purposes, another unique identifier number could be used. It was reported that a unique identifier number would provide a data base of voters which could be cross-checked to detect voter fraud.

The committee considered a bill draft to permit election board members and poll challengers to request identification from challenged voters to address voting eligibility concerns. Because of the variety of reasons for which a voter's eligibility may be questioned, the testimony on the bill draft indicated it would be difficult to include in the bill draft the acceptable forms of identification.

The committee also considered a bill draft to provide a provisional ballot procedure for the ballots of challenged voters. Under the bill draft, following the execution of an affidavit and the marking of a ballot by a challenged voter, the ballot would be marked "provisional" and would not be counted until the reason for the challenge is reviewed by the county canvassing board.

Testimony in support of the bill draft indicated the procedure would be an improvement over the current procedure because the bill draft would set forth a procedure by which the ballot would be set aside until the voter's eligibility is reviewed. Under current law, the ballot of a challenged voter, regardless of the voter's eligibility, is not kept separate and is included and counted with all the nonchallenged ballots. Opponents of the bill draft indicated that unless there is evidence that a large voter fraud problem exists, the state should not impose any procedures that would empower poll workers to make people uncomfortable when they come to polls.

Recommendations

The committee recommends House Bill No. 1047 to permit election board members and poll challengers to request identification from challenged voters in order to address voting eligibility concerns. The bill provides that if the requested identification does not adequately address the eligibility concerns, the election board member or poll challenger may request that the person execute an affidavit before being permitted to mark a ballot.

The committee recommends House Bill No. 1048 to provide a provisional ballot procedure for the ballots of challenged voters. Under the bill, following the completion of the affidavit and the marking of the ballot by the challenged voter, the poll challenger or election board member is required to insert the marked ballot in an envelope, seal the envelope, and write the word "provisional" on the envelope and a statement of the reason for the challenge. Following the election, the county auditor is required to review the reason for the challenge and is required to make a recommendation to the county canvassing board as to whether the challenged voter is a qualified voter.

The committee makes no recommendation regarding voter registration.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of 11 members. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The national conference consists of representatives of all states and its purpose is to promote uniformity in state law on all subjects in which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under NDCC Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Council for its review and recommendation during the interim between legislative sessions.

The state commission recommended five uniform Acts to the Legislative Council for its review and

recommendation. These Acts range from replacements of existing uniform Acts adopted in North Dakota to comprehensive legislation on subjects not covered by existing state law. The five Acts were the Revised Uniform Commercial Code Article 9 (1999); the Uniform Foreign Money-Judgments Recognition Act; the Uniform Disclaimer of Property Interests Act (1999); the Uniform Electronic Transactions Act and the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Revised Uniform Commercial Code Article 9 (1999)

The national conference recommended the Revised Uniform Commercial Code Article 9 in 1999. The Act is a revision of the Uniform Commercial Code Article 9, and the Act provides a statutory framework that governs secured transactions. As of November 2000, the Act has been adopted in 27 states and has been introduced in 12 other states.

The committee reviewed information comparing NDCC Chapter 41-09 with the provisions of Revised Article 9. Testimony in explanation of the Act indicated that Article 9 operates using two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because the public record provides the means for creditors to determine if there is any security interest that precedes theirs--a notice function. A subsequent secured creditor cannot complain that the grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

There are substantial exceptions to the above-stated perfection rule. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is also, but not always, a matter of perfecting a security interest first in time.

The committee received extensive testimony regarding the Act from persons in the banking industry, the agricultural processing industry, municipal bond attorneys, and from the Secretary of State's office. Testimony on the Act indicated there were a number of concerns with the Act, particularly regarding the priority of agricultural liens and how the priority of those liens under the Act would conflict with current practice. A number of issues were also raised regarding the incompatibility of the procedures in the Act with the state's computerized central indexing system.

Because of the complexity of the concerns raised by the testimony, the committee urged the interested parties to work together to discuss and resolve any concerns regarding the Act before the Legislative Assembly convenes in January.

The committee makes no recommendation regarding the Revised Uniform Commercial Code Article 9.

Uniform Foreign Money-Judgments Recognition Act

The Uniform Foreign Money-Judgments Recognition Act, which was completed by the national conference in 1962, has been adopted in 29 states. North Dakota adopted the Enforcement of Foreign Judgments Act in 1969 and the Foreign Money Claims Act in 1991.

Testimony in explanation of the Act indicated that the purpose of the Act is to simplify international business by recognizing money judgments obtained in other countries.

The committee received no testimony in support or in opposition to the Act. The committee makes no recommendation regarding the Uniform Foreign Money-Judgments Recognition Act.

Uniform Disclaimer of Property Interests Act (1999)

The national conference recommended the Uniform Disclaimer of Property Interests Act in 1999. Testimony in explanation of this Act indicated that the Act updates and replaces the earlier Uniform Disclaimer of Property Interests Act; the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act; and the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act. It allows beneficiaries of intestate, testamentary, and nontestamentary interests to execute a disclaimer of those interests. A disclaimer extinguishes the interest as if that interest had never been granted. Disclaimers are used to reallocate interests in estates, trusts, and other kinds of property holdings in which benefits may be allocated at death. This Act makes it clearer that trustees and other fiduciaries may use disclaimers, that powers of appointment may be disclaimed, and that unfair distributions of interests are avoided when disclaimers are used. As of November 2000, Hawaii is the only state to have adopted the Act.

The committee received no testimony in support or in opposition to the Act. The committee makes no recommendation regarding the Uniform Disclaimer of Property Interests Act.

Uniform Electronic Transactions Act

The national conference recommended the Uniform Electronic Transactions Act in 1999. The Act is designed to support the use of electronic commerce. The primary objective of the Act is to establish the legal equivalence of electronic records and signatures with paper writings and manually signed signatures, removing barriers to electronic commerce. Testimony in explanation of the Act indicated that the Act is the first comprehensive effort to prepare state law for the electronic commerce era. The Act contains several sections that affect state government records. The Act provides for the authority of the state records administrator to develop rules for electronic records.

Other testimony received regarding the Act indicated that the Act would give state agencies the authority to accept signatures electronically. It was noted that the Act refers to government agencies, which includes political subdivisions and other nonstate governmental agencies and the definition should be more specific to apply to only state agencies. The committee also received testimony regarding a concern about the lack of procedural clarity in the relationship to the state's existing notary laws. Further testimony indicated that the Act is a matter which interests and is generally supported by the state's financial institutions.

The committee received testimony that both houses of Congress have approved S. 761, titled the Electronic Signatures in Global and National Commerce Act or "E-Sign," and that it was signed by the President on June 30, 2000. The uniform Act and the "E-Sign" legislation overlap significantly. In some cases the federal legislation uses the language of the uniform Act without change. The federal legislation does not preempt state enactments of the uniform Act, and it permits additional states to enact the uniform version of the Act without fear of preemption. It is unclear, however, whether the states must adopt the uniform Act without amendment to avoid federal preemption. As of November 2000, the Act has been adopted by 23 states and has been introduced in five other states.

The committee makes no recommendation regarding the Uniform Electronic Transactions Act.

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act was recommended by the national conference in 2000 and has not yet been enacted by any state.

Testimony in explanation of the Act indicated that the Act provides for the interstate enforcement of protection

orders issued by another state's tribunal. The Act only provides for the enforcement of protection orders and does not provide for the enforcement of support orders. The Act would repeal a similar North Dakota law, NDCC Section 14-07.1-22, which was enacted in 1999. The uniform Act is different from Section 14-07.1-22 in that the uniform Act defines a protection order; the uniform Act allows for the presentation of the protection order to a law enforcement officer by electronic or other medium if it is retrievable in perceivable form; and the uniform Act provides for immunity for officials acting in good faith who are enforcing a valid protection order.

Other testimony regarding the Act indicated that while there is support of the concept of uniform laws as they relate to protection orders and full faith and credit, there are concerns over the possibility of losing provisions in the current law and that the lack of clarity in some areas of the uniform law may impede training and enforcement. Several areas of concern included the notice on ex parte order, certification, and the transmittal process.

The committee makes no recommendation regarding the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

PUBLIC HEARINGS ON BALLOT MEASURES

By directive of the chairman of the Legislative Council, the committee conducted public hearings on the constitutional measures scheduled to appear on the primary and general election ballots. The purpose of the hearing was to promote public discussion and debate on the measures and to create a public history. Four measures appeared on the primary election ballot and one measure appeared on the general election ballot.

Measure No. 1 - Primary Election

Measure No. 1 on the June 2000 primary election ballot related to the membership of the State Board of Higher Education. The measure, which amended subsection 2 of Section 6 of Article VIII of the Constitution of North Dakota, changed from one to two the number of persons holding a bachelor's degree from the same institution of higher education which is under the jurisdiction of the North Dakota State Board of Higher Education who are eligible to serve on the eight-member board at the same time.

Testimony in support of measure No. 1 indicated that the passage of the measure would provide the flexibility necessary to attract a broader pool of candidates for the State Board of Higher Education. The measure keeps the principle that a majority of the board could not be a graduate of any one campus in the state. The measure only limits the number of board members who receive bachelor's degrees from the same institution; however, it is possible that there may be more than two members of the board who had received an associate's, master's, or doctorate degree from the same institution. Other

testimony in support of measure No. 1 indicated that the recent change in the length of board members' terms from seven years to four years gave the board selection committee the opportunity to review candidates more frequently. That change, in addition to the change proposed in measure No. 1, would help to "raise the bar" on the quantity and quality of candidates for board positions.

There was no testimony in opposition to primary election measure No. 1.

This measure was approved at the June 13, 2000, primary election.

Measure No. 2 - Primary Election

Measure No. 2 on the primary election ballot amended Section 5 of Article V of the Constitution of North Dakota to provide that at the November 2004 general election, the Agriculture Commissioner, Attorney General, Secretary of State, and Tax Commissioner would be elected to terms of two years. Beginning with the November 2006 general election, these offices would again be elected to terms of four years. The measure would change the rotation so that, beginning with the November 2006 general election, approximately half of the statewide officials would be on the ballot every two years and still be elected for terms of four years.

Testimony in support of measure No. 2 indicated that because the Labor Commissioner is no longer an elected position, the only statewide official elected in nonpresidential year elections is one Public Service Commissioner. Because state representatives are now elected to four-year terms, one Public Service Commissioner position would be the only position on the ballot in half the districts in the state in nonpresidential years. Under measure No. 2, there would be six statewide officials elected in a presidential election year and six elected in the nonpresidential election year. The testimony further indicated that there are not enough campaign volunteers or campaign contributions to go around when all statewide officers are elected in one election. About 30 states elect their governors in the nonpresidential year election. The passage of measure No. 2 would better serve the citizens of the state. It was noted the only drawback of measure No. 2 would be that eight candidates for office in 2004 would have to run for a two-year term rather than a four-year term. Other testimony in support of the measure indicated that the measure would place more focus on the nonpresidential year election.

Further testimony in support of measure No. 2 indicated that moving the election of these four constitutional officers to the nonpresidential year election cycle would allow the voters to become more knowledgeable about each individual candidate and about each candidate's qualifications to hold public office. Because of the large number of positions listed on the present statewide ballot, it is challenging for the voters to adequately learn

about all the candidates' qualifications. The resources of the media are spread too thinly among the many different races, and it becomes a challenge for the media to adequately provide coverage of the elections. The passage of measure No. 2 would benefit and enhance the state's system of government, would enhance interest in nonpresidential elections, and more persons may want to consider running for a statewide elected office. The passage of measure No. 2 would also strengthen the political party structure.

The committee received no testimony in opposition to measure No. 2.

This measure was approved at the June 13, 2000, primary election.

Measure No. 3 - Primary Election

Measure No. 3 on the primary election ballot related to the elimination of the State Treasurer position. This measure would have amended Section 2 of Article V, Section 3 of Article IX, and Section 12 of Article X of the Constitution of North Dakota, and would have repealed Section 15 of Article XII of the Constitution of North Dakota.

Effective January 1, 2003, this measure would have eliminated the State Treasurer as an elected officer of the state and would have provided that upon approval of this measure, the State Treasurer would be elected to a final term of two years at the November 2000 general election. This measure also provided that the Agriculture Commissioner would replace the State Treasurer on the Board of University and School Lands and would repeal those duties of the State Treasurer related to the issuance of legal tender by banks in this state.

Testimony in support of measure No. 3 indicated that the passage of the measure would provide for a more effective and efficient government. The testimony indicated that of the seven positions in the State Treasurer's office, only two would need to be retained, and those two positions could be a part of the Office of Management and Budget. The Bank of North Dakota and the Office of Management and Budget perform some of the same functions as the State Treasurer's office. It was argued that, regardless of the amount of money that can be saved or the number of FTE positions involved, there is a responsibility to the citizens of the state to create good public policy and good cost-efficient government. The duties performed by the State Treasurer's office could be performed by the Office of Management and Budget, the Bank of North Dakota, and the Attorney General's office. The responsibility for the veterans' postwar trust fund could be transferred to the State Retirement and Investment Office. According to the testimony, the people of the state want an efficient government.

Other testimony in support of measure No. 3 indicated that advancements in technology, including the use of electronic payments and deposits, have taken

away many of the manual duties of the State Treasurer's office. With the use of technology and other existing state agencies, the State Treasurer's office is virtually obsolete and unnecessary. Other states are recognizing the changing business environment and are voting to eliminate their State Treasurers. It was stated that the passage of measure No. 3 would result in a net savings to the taxpayers of over \$500,000 per biennium.

Additional testimony in support of measure No. 3 suggested it is time that North Dakota government move out of the 19th century. The testimony further indicated that if the measure were approved, the Legislative Assembly would be responsible for deciding which agency should be assigned the duties of the State Treasurer's office. Other testimony indicated that the private business community supports further consolidation and reorganization of government entities at all levels when it provides for a more efficient, effective, and economical government. Finally, testimony in support of measure No. 3 indicated that significant advancements in information technology will have a dramatic impact on the state and on state government. The state needs to reengineer how the state does its business, and it will be necessary to look at ways of reducing the costs of state government. The State Treasurer's office is a victim of these advances in technology.

Testimony in opposition to measure No. 3 indicated that the State Treasurer deals with the licensing and regulation of alcoholic beverage wholesalers and distributors and helps with the regulation of suppliers. The argument was made that the alcoholic beverage industry is vulnerable to abuse, and the State Treasurer is doing a good job of regulating the industry. Reassigning the State Treasurer's duties does not eliminate the costs of performing those duties. The State Treasurer's office is very streamlined. If the alcoholic beverage regulation duties were assigned to the Attorney General's office, eventually an alcohol control commission would need to be developed and that would result in an additional level of government. It was noted the recordkeeping done by the State Treasurer's office is very detailed, and if the position is eliminated, there will still be a need for someone to maintain those records.

Additional testimony in opposition to measure No. 3 indicated the framers of the constitution believed it was important for officials to be elected, because an elected official is accountable to the people. Appointed officials do not always perform in the most exemplary way because appointed officials are only accountable to the person who makes the appointment and are not subject to recall. It was stated that the people of the state do not want the control of the government in the hands of just a few elected officials.

Other testimony in opposition to measure No. 3 indicated that the elimination of the State Treasurer's office would strip the people of their right to elect their own state officials and that the removal of the office would weaken accountability, increase bureaucratic cost, move

the people further away from the process, and would add more power to agencies that report to the Governor, not to the people. It was noted that North Dakotans spoke to this issue in 1984, and it was defeated by a 60 percent vote. The voters have soundly rejected abolishing a constitutional office and giving up their right to say who will serve them. With a biennial budget of only \$695,265, it was argued that the office is one of the most frugal in state government and at the same time provides a necessary check and balance in the distribution of state moneys. With a staff of seven, proponents of the office believe the office provides cost-effective, efficient government. The breaking apart of the State Treasurer's office and moving it to four state agencies would eliminate the ability to track how those dollars are spent and the bureaucracy would grow.

Neutral testimony on measure No. 3 indicated that there is a concern about how the passage of measure No. 3 would affect the alcoholic beverage industry. The viewpoint was expressed that the Attorney General's office is not as experienced and is not as familiar with federal alcohol regulations as the State Treasurer's office has been, and the office has been stable and helpful. Presently, the industry is required to report to just one agency. If the duties are spread among several agencies and those functions do not get the necessary attention, it is likely that an alcohol control board or commission would have to be created. While other states may have eliminated their treasurer's office, those offices were not responsible for regulating their state's alcoholic beverage industry.

This measure was defeated at the June 13, 2000, primary election.

Measure No. 4 - Primary Election

Measure No. 4 on the primary election ballot amended Section 11 of Article IV of the Constitution of North Dakota to allow the Legislative Assembly to provide, by law, a procedure for filling vacancies occurring in the Legislative Assembly and to replace the requirement that the Governor call an election to fill such vacancies.

Testimony received by the committee in opposition to measure No. 4 indicated that because representatives now serve four-year terms, it is likely there will be more legislative vacancies than ever. The measure would allow the Legislative Assembly to determine how a vacant legislative seat is to be filled. The measure would give a nonelected legislator an undue advantage in the next election because the selected or appointed legislator could potentially serve four years before being required to face an election. The measure would allow the majority party at the time to adopt a procedure that would benefit that party.

Measure No. 4 was approved at the June 13, 2000, primary election.

Measure No. 1 - General Election

The only constitutional measure on the November 2000 general election ballot related to hunting, fishing, and trapping. The measure, which created a new section to Article XI of the Constitution of North Dakota, provided that hunting, trapping, and fishing are a valued part of the state's heritage and will be preserved for the people and managed by law and regulation for the public good.

Testimony received by the committee in support of the measure indicated that in some parts of the country, there are groups who are trying to rid citizens of the ability to hunt, fish, and trap. It was said the people of the state need to make a statement that they value hunting, fishing, and trapping as a part of their heritage and that the people want to preserve that heritage. The testimony indicated during the drafting of the language in the measure, there was a concern over whether the language should be placed in the state's bill of rights in Article I of the Constitution or whether it should be placed in the general provisions in Article XI of the Constitution. It was decided it was more appropriate for the language to be placed in Article XI rather than in Article I because some persons might view the language as creating a right and might believe that their hunting, fishing, and trapping activities should not be subject to regulation and limitations. Further testimony in support of the measure indicated that hunting, fishing, and trapping were and are an important part of the heritage of the Indian tribes as well as the pioneers. Concerns were expressed regarding future access to land and lake shores and to the possibility of commercial fishing becoming an issue in the state. The testimony indicated that the measure provides that the Legislative Assembly is in direct control of the laws that regulate hunting, fishing, and trapping.

The committee received no testimony in opposition to measure No. 1.

Measure No. 1 was approved at the November 7, 2000, general election.

CONSTITUTIONAL AND STATUTORY REVISION

Grandparent Visitation - Recommendation

The committee received testimony regarding a North Dakota Supreme Court decision, *Hoff v. Berg*, 595 N.W.2d 285 (1999) in which the court declared a portion of NDCC Section 14-09-05.1 unconstitutional.

In 1983 the Legislative Assembly enacted a statute regarding grandparental visitation rights. That statute provided the test that the court was to apply was

whether visitation was in the best interests of the minor and would not interfere with the parent-child relationship. Further, the court was to consider the amount of personal contact between the grandparents or great-grandparents and the minor and the minor's parents. In 1993 the statute was amended to require that visitation must be granted to grandparents unless the court found that visitation was not in the best interests of the minor. The 1993 amendment shifted the burden to the nonconsenting parent to prove that visitation was not in the best interests of the child by providing that visitation rights of grandparents to an unmarried minor were presumed to be in the minor's best interest. In *Hoff v. Berg*, the North Dakota Supreme Court found unconstitutional the 1993 amendment providing the presumption that grandparent visitation was in the best interests of the child and shifting the burden to the parent to prove that it was not.

The committee also received testimony regarding a recent United States Supreme Court opinion, *Troxel v. Granville*, ___ U.S. ___, 120 S. Ct. 2054 (2000), in which the Court declared a Washington grandparent visitation statute unconstitutional. In that case, the Washington statute, which was declared to be very broad, permitted "any person" to petition a court for visitation rights "at any time," and authorized the court to grant such visitation rights whenever "visitation may serve the best interest of the child." The Court, in finding the statute unconstitutional as applied, reiterated its prior holdings that "there is a presumption that fit parents act in the best interests of their children." The Court also found that the statute's application of a presumption in favor of the grandparents was a fatal flaw in the application of the statute. According to the testimony received by the committee, the 1993 amendments to the North Dakota grandparent visitation statute would not have withstood constitutional scrutiny under *Troxel*; however, the now applicable 1983 statute appears to be constitutional under the Court's analysis in *Troxel*.

The committee recommends Senate Bill No. 2047 to amend NDCC Section 14-09-05.1, the grandparent visitation statute, to comply with *Hoff v. Berg*.

Technical Corrections - Recommendation

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. The committee recommends House Bill No. 1049 to make technical corrections throughout the Century Code. The following table lists the North Dakota Century Code sections affected and describes the reasons for the change:

4-30-03.9	The change corrects a reference to the Milk Stabilization Board, which was changed to the Milk Marketing Board by 1997 S.L., ch. 69
10-19.1-05	Section 10-19.1-03, which is cross-referenced in Section 10-19.1-05, was repealed by 1999 S.L., ch. 50, § 79
15-18-06	Section 15-10-01.1, which is cross-referenced in Section 15-18-06, was repealed by 1999 S.L., ch. 154, § 2
26.1-26-11	The change corrects a typographical error contained in 1999 S.L., ch. 254, § 9
27-20-02(6)	The definitions in this section were extensively revised by 1999 S.L., ch. 282, § 3. That amendment also incorrectly changed the internal references.
38-18.2	This chapter is repealed because the chapter established the Tenneco Plant Impact Assistance Interstate Compact, which is now obsolete
38-03-09.4(1)	The change corrects an error in 1965 S.L., ch. 269, § 4
40-47-01.1(5)	1999 S.L., ch. 367, § 1, added a new subsection 3 to this section but did not correct the internal reference
40-63-01(1)(7)	The change corrects a reference to the Office of Intergovernmental Assistance, which was changed to the Division of Community Services by 1999 S.L., ch. 475
40-63-02	The change corrects a reference to the Office of Intergovernmental Assistance, which was changed to the Division of Community Services by 1999 S.L., ch. 475
40-63-03	The change corrects a reference to the Office of Intergovernmental Assistance, which was changed to the Division of Community Services by 1999 S.L., ch. 475
40-63-09	The change corrects a reference to the Office of Intergovernmental Assistance, which was changed to the Division of Community Services by 1999 S.L., ch. 475
49-21-01(13)	1999 S.L., ch. 411, § 2, created five new definitions to this section. The change corrects the references in this subsection.
52-06-06.1(2)(c)	42 U.S.C. 662 was repealed in 1996 Public Law 104-193, which revised and moved the definition to 42 U.S.C. 659(i)(5), which is Section 459 of the Social Security Act
57-39.3-02	This change corrects an error contained when this section was created by 1989 S.L., ch. 714, § 4
57-40.3-11	As amended by 1989 S.L., ch. 723, § 1, Section 57-40.3-10 no longer contains a subsection 3
62.1-02-01	This change corrects an internal cross-reference that resulted from the removal of a subsection by 1995 S.L., ch. 120

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Legislative Audit and Fiscal Review Committee is a statutorily created committee of the Legislative Council. Pursuant to North Dakota Century Code (NDCC) Section 54-35-02.1, the committee is created as a division of the Budget Section and its members are appointed by the Legislative Council. The committee's purposes are to:

- Study and review the state's financial transactions to assure the collection of state revenues and the expenditure of state moneys is in compliance with law, legislative intent, and sound financial practices.
- To provide the Legislative Assembly with objective information on revenue collections and expenditures to improve the fiscal structure and transactions of the state.

Pursuant to NDCC Section 54-35-02.2, the committee is charged with the duty of studying and reviewing audit reports submitted by the State Auditor. The committee is authorized to make such audits, examinations, or studies of the fiscal transactions or governmental operations of state departments, agencies, or institutions as it may deem necessary.

Committee members were Representatives Francis J. Wald (Chairman), Ole Aarsvold, Wesley R. Belter, Rex R. Byerly, RaeAnn G. Kelsch, Doug Lemieux, Andrew G. Maragos, Ronald Nichols, Jim Poolman, Mike Timm, and Lonny B. Winrich and Senators Dwight C. Cook, Jerome Kelsh, Ralph Kilzer, Jerry Klein, Duane Mutch, David O'Connell, and Ken Solberg.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

During the 1999-2000 interim, the State Auditor's office and independent accounting firms presented four performance audit and evaluation reports and 101 financial or information technology application audit reports. An additional 79 audit reports were filed with the committee but were not formally presented. The committee's policy is to hear only audit reports relating to major agencies and audit reports containing major recommendations. However, other audit reports are presented at the request of any committee member.

The committee was assigned the following duties and responsibilities for the 1999-2000 interim:

1. Receive the annual audit report for the State Fair Association (NDCC Section 4-02.1-18).
2. Receive the annual audit report from any corporation or limited liability company that produces agricultural ethyl alcohol or methanol in this state and which receives a production subsidy from the state (NDCC Sections 10-19.1-152 and 10-32-156).
3. Receive the annual audited financial statements and a report from the North Dakota low-risk

incentive fund. (NDCC Section 26.1-50-05 provides for the financial statements and the report to be submitted to the Legislative Council. The Legislative Council assigned this responsibility to the Legislative Audit and Fiscal Review Committee.)

4. Receive the North Dakota Stockmen's Association audit report. (NDCC Section 36-22-09 provides for the audit report to be submitted to the Legislative Council. The Legislative Council assigned this responsibility to the Legislative Audit and Fiscal Review Committee.)
5. Receive annual reports on the writeoffs of accounts receivable at the Department of Human Services and Developmental Center at Westwood Park, Grafton (NDCC Sections 25-04-17 and 50-06.3-08).
6. Receive the biennial performance audit report on Job Service North Dakota (NDCC Section 52-02-18).
7. Determine the frequency of audits or reviews of state agencies (NDCC Section 54-10-01(2)).
8. Determine necessary performance audits. (NDCC Section 54-10-01(4) provides that the State Auditor is to perform or provide for performance audits of state agencies as determined necessary by the State Auditor or the Legislative Audit and Fiscal Review Committee.)
9. Determine when the State Auditor is to perform audits of political subdivisions (NDCC Section 54-10-13).
10. Direct the State Auditor to audit or review the financial records and accounts of any political subdivision (NDCC Section 54-10-15).
11. Study and review audit reports submitted by the State Auditor (NDCC Section 54-35-02.2).
12. Receive reports from the director of the Workers Compensation Bureau and the chairman of the Workers Compensation Board of Directors, including a report on the biennial performance evaluation of the Workers Compensation Bureau (NDCC Sections 65-02-03.3 and 65-02-30).
13. Review the appropriateness of campaign contributions made by the National Association of State Treasurers and affiliated organizations to the State Treasurer's Office Preservation Committee, a committee opposed to constitutional measure No. 3 in North Dakota's June 2000 primary election. (Assigned to the Legislative Audit and Fiscal Review Committee by the Legislative Council chairman on June 9, 2000.)

SUGGESTED GUIDELINES FOR PERFORMING AUDITS OF STATE AGENCIES

The committee reviewed guidelines, which were developed by prior Legislative Audit and Fiscal Review Committees, relating to state agency and institution audits performed by the State Auditor's office and independent certified public accountants. The guidelines require that audit reports address the following:

1. Whether expenditures are made in accordance with legislative appropriations and other state fiscal requirements and restrictions.
2. Whether revenues are accounted for properly.
3. Whether financial controls and procedures are adequate.
4. Whether the system of internal control is adequate and functioning effectively.
5. Whether financial records and reports reconcile with those of state fiscal offices.
6. Whether there is compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning.
7. Whether there is evidence of fraud or dishonesty.
8. Whether there are 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 audit reports for preceding periods.
10. Whether all activities of the agency are 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 develops a budget of anticipated expenditures and revenues and compares, on at least a quarterly basis, budgeted expenditures and revenues to actual expenditures and revenues accounted for using the accrual basis of accounting.

State agency and institution audit reports presented to the committee during the 1999-2000 interim addressed the 12 audit guidelines developed by the committee.

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 Bailly LLP, Certified Public Accountants, for an audit of the State Auditor's office for the years ended June 30, 1999 and 1998. The firm presented its audit report which, in accordance with the

terms of the contract, included a review of the audit procedures and practices of the State Auditor's office. The report contained recommendations encouraging the State Auditor's office to:

- Determine if performance audit standards should be followed for audits of state agencies and institutions.
- Consider limiting the scope of performance audits.

New Audit Approach

The committee received testimony from a representative of the State Auditor's office regarding the agency's plan to change the audit approach used in conducting audits of state agencies and institutions. The committee learned that for audits of state agencies and institutions conducted by the State Auditor's office, governmental auditing standards for performance audits are more applicable than governmental auditing standards for financial audits. The committee was informed that reports on audits conducted using performance auditing standards will include audited financial statements but will not include an opinion on those financial statements because the audits will not determine if the financial statements are prepared in accordance with generally accepted accounting principles. While members of the committee expressed a concern that an opinion will not be issued on the financial statements included in these audit reports, the committee supported the proposal presented by the State Auditor's office to begin conducting audits of state agencies and institutions using governmental auditing standards for performance audits.

Representatives of the State Auditor's office presented the initial reports on audits conducted using governmental auditing standards for performance audits. The audit reports were accepted by the committee and committee members provided the following comments and suggestions to the State Auditor's office regarding the new audit report format:

- Committee members commented that the information included in the *Discussion and Analysis* section appears subjective in nature and may not be appropriate for inclusion in an audit report. The committee learned in some cases the information in this section is prepared by the State Auditor's office and in some cases is prepared by the agency being audited.
- Committee members observed that the items listed in the *Noteworthy Accomplishments* section may be normal agency accomplishments, not extraordinary accomplishments, and suggested that it may not be appropriate to highlight in an audit report normal accomplishments associated with an agency's operations.
- Committee members observed that auditors may require additional training in order to be able to

make appropriate recommendations for improved agency operational efficiency.

PERFORMANCE AUDITS AND EVALUATIONS

Workers Compensation Bureau

Pursuant to NDCC Section 65-02-30, a biennial performance evaluation was conducted of the Workers Compensation Bureau. The evaluation included an examination of the claims department, policyholder services department, fraud department, loss control department, the governance of the Board of Directors, cost containment activities, and performance measurements used by the agency. The evaluation was conducted by The Hays Group, Minneapolis, Minnesota. The resulting report included 138 recommendations, including the following:

- The Workers Compensation Bureau should set a deadline for determining the compensability of claims.
- The Workers Compensation Bureau should consider settlement of certain claims.
- The Workers Compensation Bureau should remove the payroll cap and calculate premiums on the basis of gross payroll.
- The Workers Compensation Bureau budget should be removed from the legislative appropriation process.
- The Legislative Assembly should amend open records laws to allow the Workers Compensation Bureau Board of Directors to hold closed meetings in certain cases.

The committee received testimony from representatives of the Workers Compensation Bureau and the Workers Compensation Board of Directors that indicated of the 138 recommendations, 24 were completely implemented, 51 were partially implemented, 45 were pending implementation, and 18 were not anticipated to be implemented. The committee accepted the performance evaluation report of the Workers Compensation Bureau.

Job Service North Dakota

Pursuant to NDCC Section 52-02-18, a biennial performance audit was conducted of Job Service North Dakota. The audit included an examination of the agency's strategic business plan, information technology plan, policies and procedures to reduce the duration of benefits and assess employment needs, Work Force 2000 program, staffing levels, and the status of the unemployment insurance trust fund. The audit was conducted by Brady, Martz & Associates, P.C., Certified Public Accountants, Bismarck. The resulting report included 36 recommendations, including the following:

- The Legislative Assembly should review the statutory definitions relating to "suitable work" and the benefit duration formula for claimants returning to their previous employers.

- The Legislative Assembly should provide specific appropriations for the administration of the Work Force 2000 program.
- Job Service North Dakota should provide a report to the Legislative Assembly regarding how the agency will restructure in response to proposed changes in federal funding.

The committee received testimony from a representative of Job Service North Dakota indicating the agency agrees with and has taken steps to implement nearly all recommendations included in the report. The committee accepted the performance audit report on Job Service North Dakota.

Child Support Enforcement Program

A representative of the State Auditor's office presented the results of a risk analysis of the various programs of the Department of Human Services conducted by the State Auditor's office for the purpose of prioritizing programs for performance audit. The risk analysis identified the child support enforcement program as having the highest risk rating within the Department of Human Services.

The State Auditor's office and TMR-MAXIMUS, a consulting firm contracted with by the State Auditor's office, conducted a performance audit of the state's child support enforcement program. The performance audit report included the following recommendations:

- The Department of Human Services should introduce legislation to allow the child support enforcement program to be state-administered, rather than county-administered.
- North Dakota should "universalize" its caseload to allow most child support enforcement cases to receive "IV-D services." (The federal child support enforcement program was established in 1975 under Title IV-D of the Social Security Act. Services provided through the state's child support enforcement program, referred to as "IV-D services," include establishing and maintaining case records, providing locate services to find the legally responsible parent, establishing paternity, establishing legal support orders, providing for the enforcement of support obligations, and providing for the collection and distribution of payments.)
- The Department of Human Services should introduce legislation to implement an administrative hearings process, in lieu of a judicial process, utilizing the Office of Administrative Hearings to conduct child support hearings; establish paternity; establish, modify, and enforce child support and medical support orders; and conduct hearings for license renewal and suspension issues. The report indicated that federal regulations allow the salaries of administrative law judges to be reimbursed with federal funds at the rate of

66 percent but do not allow for the reimbursement of judges' salaries.

The committee received testimony from a representative of the Department of Human Services indicating the agency agrees with the recommendations included in the report and plans to perform a cost-benefit analysis to determine the feasibility of implementing the recommendations. The committee accepted the performance audit report on the child support enforcement program.

Contracts for Services

The committee received a performance audit report from the State Auditor's office related to contracts for services entered into by state agencies and institutions of higher education during the period July 1, 1996, through June 30, 1999. The report included the following recommendations:

- The Office of Management and Budget should introduce legislation to allow the Office of Management and Budget to establish policies relating to the procurement of services and to establish master contracts for services.
- The Office of Management and Budget and the North Dakota University System should develop policies relating to the procurement of services and ensure that proper training is provided to state agency and institution personnel.
- The Office of Management and Budget and the Attorney General should prepare a manual to be used by state agencies and institutions for contract drafting and review.
- The Office of Management and Budget should establish an on-line contract system accessible by all state agencies.
- The Office of Management and Budget and the North Dakota University System should establish policies relating to contract monitoring and ensure that proper training is provided to state agency and institution personnel.
- The Office of Management and Budget and the North Dakota University System should determine if cooperative purchases of services would be beneficial.

The committee accepted the performance audit report on contracts for services.

Performance Audit Followup Report

A representative of the State Auditor's office presented a followup report on the performance audit of the Children's Services Coordinating Committee. The report on the performance audit of the Children's Services Coordinating Committee was issued on November 1, 1996. The followup report indicated that of the 39 recommendations contained in the audit report, 19 were fully implemented, 13 were partially implemented, one was not implemented, and six were no longer applicable.

Future Performance Audits

Prior to the 1999-2000 interim, the committee asked the State Auditor's office to give priority to conducting a performance audit of the Department of Transportation. The committee learned that although the State Auditor's office has not conducted a performance audit of the Department of Transportation, it is still considering the possibility of conducting such an audit. The committee learned before the State Auditor's office will proceed with an audit of the Department of Transportation, a risk assessment of the department's various programs will be completed and the results presented to the Legislative Audit and Fiscal Review Committee. Representatives of the State Auditor's office plan to develop a list of possible performance audit topics for the 2001-02 interim.

LAKE AGASSIZ REGIONAL COUNCIL Background

During the 1997-98 interim, the committee requested that the Attorney General's office conduct an investigation regarding the formation of a nonprofit corporation by the Lake Agassiz Regional Council and the propriety of transfers made from the council to the nonprofit corporation. The Attorney General's investigation concluded that the Lake Agassiz Regional Council inappropriately transferred and assigned staff, assets, and bank accounts to the Lake Agassiz Regional Development Corporation. Based on the recommendation of the 1997-98 interim Legislative Audit and Fiscal Review Committee, the Legislative Council chairman requested the Attorney General to ask county state's attorneys, city attorneys, and county commissioners of political subdivisions affiliated with the Lake Agassiz Regional Council to take such action as may be necessary to dissolve the Lake Agassiz Regional Development Corporation and transfer its assets back to the Lake Agassiz Regional Council. In addition, the Legislative Council chairman urged state agencies to cease financial activity with the Lake Agassiz Regional Development Corporation and the Lake Agassiz Regional Council.

Testimony and Findings

The committee learned the Lake Agassiz Regional Council worked with the state's attorneys and county commissioners of affiliated political subdivisions to transfer certain assets back to the Regional Council. A representative of the Lake Agassiz Regional Council testified that the Regional Council and the Regional Development Corporation are two separate organizations, and that it is necessary for a nonprofit corporation to continue to exist in order to receive donations and federal funds that the Regional Council cannot receive.

The Legislative Audit and Fiscal Review Committee requested the Attorney General's office conduct a followup review of the administrative structure of the Lake Agassiz Regional Council and the Lake Agassiz

Regional Development Corporation to determine the appropriateness of the new administrative structure. A report received from a representative of the Attorney General's office at a subsequent meeting indicated that the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation are two separate entities with separate boards of directors. While the entities continue to share office space and employ some of the same staff, the report from the Attorney General's office indicated this arrangement does not pose a problem as long as adequate records are maintained.

The Legislative Audit and Fiscal Review Committee requested the State Auditor's office review transfers of assets originally made from the Lake Agassiz Regional Council to the Lake Agassiz Regional Development Corporation and transfers subsequently made to return assets to the Lake Agassiz Regional Council in order to comply with the committee's 1997-98 interim recommendation.

The committee received a report from a representative of the State Auditor's office regarding transfers of assets between the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation. Two loan programs and a donated building comprise over 90 percent of the assets originally transferred to the corporation from the Regional Council. The report recommended the donated building not be transferred back to the Lake Agassiz Regional Council, that one of the loan programs not be transferred back to the council for administrative reasons, and that the other major loan program could be transferred back to the council because it could be administered by either the council or the corporation.

The committee received testimony from the director of the Lake Agassiz Regional Council and members of the boards of directors of the Regional Council and the Regional Development Corporation regarding the need for the corporation to exist and the effectiveness of the services provided by both entities. The committee learned from a representative of the Attorney General's office that the state's attorneys in the area served by the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation were satisfied with the actions that have been taken to return assets to the proper entity.

Conclusion

The committee determined that the issues of concern relating to the organizational structure of the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation and the transfers of assets between the two entities have been resolved. The Legislative Council chairman was informed of the resolution of the committee's concerns. A letter was subsequently sent by the chairman of the Legislative Council to various state agencies informing them the

issues of concern relating to the organizational structure and the transfers of assets between the Lake Agassiz Regional Council and the Lake Agassiz Regional Development Corporation were resolved to the satisfaction of the Legislative Audit and Fiscal Review Committee and that state agencies could resume financial activity with the two entities.

DEPARTMENT OF PUBLIC INSTRUCTION CHILD AND ADULT CARE FOOD PROGRAM Background

The committee received from the State Auditor's office the statewide single audit report for the years ended June 30, 1998, and 1997. The statewide single audit is the audit of all federal funds received by state agencies and institutions. The committee learned the largest questioned cost in the statewide single audit report relates to the child and adult care food program administered by the Department of Public Instruction.

Testimony

The committee learned the Department of Public Instruction made payments to Dakota Nutrition, Inc., for meal reimbursements through the department's child and adult care food program. Some of the amounts claimed by Dakota Nutrition, Inc., were later found to be unallowable or unsupported, thereby creating a questioned cost of \$1,412,438. No recommendation was made by the State Auditor's office regarding this finding because the monitoring procedures implemented by the Department of Public Instruction initially identified the problem. At the time of the report, the Department of Public Instruction had taken action to address the issue and had turned the issue over to the Attorney General's office for prosecution.

As an authorized "sponsoring organization" through the department's child and adult care food program, Dakota Nutrition, Inc., accumulated meal counts from various day care providers in the Minot area, submitted the meal count information to the Department of Public Instruction, and was then reimbursed by the department for the meals provided at the daycare centers. Dakota Nutrition, Inc., then remitted the meal reimbursement funds to the various daycare providers. Discrepancies were discovered when the Department of Public Instruction performed a review of the claims filed by Dakota Nutrition, Inc. The department hired a certified public accounting firm to perform an audit of Dakota Nutrition, Inc. The accounting firm was unable to complete the audit because Dakota Nutrition, Inc., could not produce records substantiating \$1.4 million in claims.

The committee learned a default judgment was obtained against Dakota Nutrition, Inc., for \$12,438 relating to inappropriate administrative expenses claimed by Dakota Nutrition, Inc. A representative of the Attorney General's office reported that the director of Dakota Nutrition, Inc., had moved out of the state and

did not respond to the lawsuit. Consequently, it is unlikely the state will be able to collect the \$12,438. The committee also learned the Attorney General's office does not plan to pursue a lawsuit regarding the \$1.4 million of questioned costs because it is unlikely the state will be able to collect the \$12,438 judgment and because the Department of Public Instruction believes the \$1.4 million was properly distributed. A representative of the Department of Public Instruction reported that even though records do not exist to substantiate the proper distribution of the \$1.4 million, the department believes the money was properly distributed because the number of clients receiving meal reimbursement has remained constant after Dakota Nutrition, Inc., ceased operating and because all providers Dakota Nutrition, Inc., claimed reimbursement for have been verified as actual providers.

A concern to members of the committee was that the United States Department of Agriculture, the federal agency in charge of the program, could take action against the state relating to the \$1.4 million because records are not available to substantiate its distribution.

Conclusion

The committee chairman requested the Department of Public Instruction keep the State Auditor's office informed regarding the status of the lawsuit involving Dakota Nutrition, Inc., and regarding any action taken by the United States Department of Agriculture to recoup funds distributed by Dakota Nutrition, Inc.

CAMPAIGN CONTRIBUTIONS RELATING TO CONSTITUTIONAL MEASURE NO. 3 IN THE JUNE 2000 PRIMARY ELECTION

Background

In a letter dated June 9, 2000, the Legislative Council chairman assigned to the Legislative Audit and Fiscal Review Committee the duty of obtaining information and reviewing the appropriateness of campaign contributions made by the National Association of State Treasurers and affiliated organizations to the State Treasurer's Office Preservation Committee. The committee is a committee registered with the Secretary of State's office in opposition to constitutional measure No. 3, which was defeated in the June 13, 2000, primary election. Measure No. 3 proposed to remove the State Treasurer as an elected state officer.

Testimony and Findings

The committee learned that of the \$50,650 of reportable contributions received by the State Treasurer's Office Preservation Committee and reported to the Secretary of State's office, \$50,000 was received from the National Association of State Treasurers and its regional divisions. The State Treasurer currently pays dues of \$1,500 per year to the National Association of State Treasurers. The committee learned the National

Association of State Treasurers is organized under Section 501(c)(6) of the Internal Revenue Code. Although entities organized under Section 501(c)(3) are prohibited from attempting to influence legislation or participating in any political campaign, entities organized under Section 501(c)(6) are not so prohibited. The committee also reviewed statutory provisions relating to campaign contributions and the filing of campaign contribution statements. The committee was advised the National Association of State Treasurers and its regional divisions did not violate state law relating to the contributions made in opposition to constitutional measure No. 3 in the June 2000 primary election. A concern to committee members was that an out-of-state entity, which receives dues from the state of North Dakota, made significant political contributions to influence a North Dakota election.

The committee learned there are two affiliated organizations of the National Association of State Treasurers--the College Savings Plans Network and the State Debt Management Network. The two affiliated organizations did not make political contributions relating to constitutional measure No. 3. At the committee's last meeting, the committee requested the Legislative Council staff obtain information regarding:

- The tax status of the College Savings Plans Network and the State Debt Management Network.
- Information relating to whether or not the donations made by the National Association of State Treasurers and its regional divisions were the result of official actions of boards or committees of the national and regional organizations.

When available, the requested information will be distributed to committee members and a copy will be retained on file in the Legislative Council office.

The committee learned the National Association of State Treasurers is affiliated with the Council of State Governments. The vice chairman of the Legislative Audit and Fiscal Review Committee is a member of the governing board of the Council of State Governments and plans to discuss the issue of the campaign contributions made by the National Association of State Treasurers and its regional divisions at the next meeting of the governing board scheduled for December 2000. The governing board of the Council of State Governments includes two members of the National Association of State Treasurers.

Conclusion

The committee's review concludes that although the National Association of State Treasurers and its regional divisions did not violate state law relating to the contributions made in opposition to constitutional measure No. 3 in the June 2000 primary election, committee members were concerned that an out-of-state entity that receives dues from the state of North Dakota made significant

political contributions to influence a North Dakota election. The committee makes no recommendation relating to the review of the appropriateness of campaign contributions made by the National Association of State Treasurers and affiliated organizations to the State Treasurer's Office Preservation Committee.

LEWIS AND CLARK REGIONAL DEVELOPMENT COUNCIL

Background

At the committee's last meeting of the 1997-98 interim held on January 27, 1999, the committee received the audit report for the North Dakota Development Fund, Inc., for the years ended June 30, 1998 and 1997. The committee learned, at the time of the report, litigation was pending between the North Dakota Development Fund, Inc., and the Lewis and Clark Regional Development Council. The issue being litigated related to a contract entered into between the Development Fund and the Lewis and Clark Regional Development Council. After the contract was signed, the Lewis and Clark Regional Development Council unsuccessfully attempted to renegotiate the terms of the contract. The contract provided for the Development Fund to maintain control over certain funds and required that amounts repaid on a loan be placed in an account at the Bank of North Dakota under the name of both the Lewis and Clark Regional Development Council and the North Dakota Development Fund, Inc. An account was established at the Bank of North Dakota, but the Development Fund was not included on the account. After approximately \$12,000 had been repaid on the loan and deposited in this account, the Lewis and Clark Regional Development Council removed the funds from the Bank of North Dakota. The amount of money relating to the litigation is approximately \$12,000.

The Legislative Council chairman, based on the recommendation of the 1997-98 interim Legislative Audit and Fiscal Review Committee, urged state agencies to cease financial activity with the Lewis and Clark Regional Development Council.

Testimony

At the committee's October 5, 1999, meeting, testimony was received from the director of the Department of Economic Development and Finance indicating the lawsuit between the North Dakota Development Fund, Inc., and the Lewis and Clark Regional Development Council was resolved.

Conclusion

The committee determined that state agencies could resume financial activity with the Lewis and Clark Regional Development Council. The Legislative Council chairman, based on the recommendation of the Legislative Audit and Fiscal Review Committee, informed state agencies that the issue regarding the Lewis and Clark

Regional Development Council and the North Dakota Development Fund, Inc., was resolved to the satisfaction of the Legislative Audit and Fiscal Review Committee and state agencies could resume financial activity with the Lewis and Clark Regional Development Council.

MONEYS RECEIVED AS A RESULT OF THE AMERICAN CYANAMID SETTLEMENT

Pursuant to a request of the committee, the State Auditor's office reviewed financial transactions relating to moneys received by the Attorney General's office as a result of the American Cyanamid settlement consent decree. Under Appendix A of the consent decree, the state received \$100,000, which was required to be used to benefit the state's agricultural community. The Attorney General awarded those moneys to the Commission on the Future of Agriculture (COFA) on December 17, 1997, and the funds were transferred to the North Dakota Farmers Union, which acted as the fiscal agent for COFA. Under Appendix B of the consent decree, the Attorney General's office received \$31,114. In compliance with NDCC Section 54-12-18, the Attorney General's office spent \$28,924 of that amount for expenses relating to the Consumer Protection Division, and the remaining \$2,189 was transferred to the state general fund at the end of fiscal year 1998. The State Auditor's office concluded that the expenditures of the Attorney General's office related to the moneys received under Appendix A and Appendix B of the American Cyanamid settlement consent decree were within the guidelines set forth in the consent decree and within the requirements of state law.

The committee also requested an Attorney General's opinion to answer the following questions:

- Was the transfer of American Cyanamid settlement funds to COFA and the North Dakota Farmers Union in compliance with constitutional and statutory provisions?
- Could a state agency have served as the fiscal agent for the settlement moneys without violating the terms of the settlement agreement?

The Attorney General's opinion subsequently presented to the committee states that the use of moneys received by the state from the settlement of a federal multistate antitrust suit to fund COFA was in compliance with both state law and the terms of the consent decree. The opinion also provides that the consent decree did not prevent a state agency from acting as the fiscal agent in disbursing those funds.

ACCEPTANCE OF AUDIT REPORTS AND IMPLEMENTATION OF AUDIT RECOMMENDATIONS

During the 1999-2000 interim, 184 audit reports were accepted by the Legislative Audit and Fiscal Review Committee, including reports on performance audits,

information technology application audits, other audits presented to the committee, and audits approved without being formally presented to the committee. The schedule attached as an appendix to this report is a listing of all audit reports accepted by the committee during the 1999-2000 interim, the date of the meeting during which they were accepted, and the date of the audit report.

The committee discussed the obligation of state agencies and institutions to implement audit recommendations in those cases in which there is disagreement between the auditor and the agency being audited. The committee learned, during the 1977-78 interim, the Legislative Audit and Fiscal Review Committee recommended all state agencies and institutions comply with and implement, within the limits of law, recommendations contained in audit reports prepared by the State Auditor's office. During the 1981-82 interim, the committee requested that the State Auditor's office begin to conduct reviews of audited agencies six months after an audit is performed to determine if agencies have complied with the auditor's recommendations.

The committee considered the differences between recommendations contained in financial audits, which deal with financial issues such as the misuse of funds, and the recommendations contained in performance audits, which deal with issues such as an agency's administration and management. A representative of the State Auditor's office indicated that for audit recommendations that do not relate to a violation of law, if the agency can document a justifiable reason for not implementing the recommendation, the State Auditor's office will not include the recommendation in subsequent audit reports.

The committee determined that a state agency has some flexibility regarding the implementation of audit recommendations and that if the agency disagrees with the auditor regarding the implementation of an audit recommendation, the issue will likely be brought to the Legislative Assembly to be resolved.

COMPREHENSIVE ANNUAL FINANCIAL REPORT

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 to conduct a review of the material included in the Comprehensive Annual Financial Report (CAFR). The CAFR contains the audited financial statements for state agencies and institutions. The committee received and accepted the state's June 30, 1999, CAFR.

STATE LIABILITY RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS

The committee reviewed the audit report for the State Board of Podiatry Examiners for the years ended

December 31, 1998, and 1997. The audit report indicates that for calendar year 1997 the Board of Podiatry Examiners had a deficit fund balance of \$7,606. The board's deficit fund balance the previous year was \$3,337. The board's deficit fund balance improved slightly to \$6,972 at the end of calendar year 1998. At the committee's last meeting, the committee requested the Legislative Council staff provide information relating to:

- The state's liability, if any, resulting from financial activities and actions of occupational and professional licensing boards.
- Statutory provisions that prohibit an occupational or professional licensing board from operating with a deficit fund balance.

When available, the requested information will be distributed to committee members and a copy will be retained on file in the Legislative Council office.

TECHNOLOGY TRANSFER, INC., AND THE NORTH DAKOTA DEVELOPMENT FUND, INC.

The committee received and accepted the audit report for Technology Transfer, Inc., for the years ended June 30, 1998, and 1997. Section 18 of 1997 Senate Bill No. 2019, required that any moneys in any investment, contract, partnership, or other business transaction of Technology Transfer be transferred to the North Dakota Development Fund, Inc., effective July 1, 1999. The committee requested that the final audit of Technology Transfer, for the year ended June 30, 1999, include a chronological list of all Technology Transfer investment activities.

The committee received and accepted the Technology Transfer audit report for the years ended June 30, 1999, and 1998. The report, which was prepared by Eide Bailly LLP, included a schedule that showed, for fiscal years 1992 through 1999, the equity investments and royalty agreements entered into by Technology Transfer. The schedule also showed the amounts transferred to the Development Fund as of June 30, 1999.

The committee received and accepted the audit report of the North Dakota Development Fund, Inc., for the years ended June 30, 1999, and 1998. The committee requested that the Board of Directors of the North Dakota Development Fund, Inc., include in future audit reports of the Development Fund a list of companies in which the fund holds an equity interest and that, unless prohibited by law, the list include the original value of the equity investment and the value of the investment at the time of the audit.

NORTH DAKOTA UNIVERSITY SYSTEM

The committee received and accepted the North Dakota University System audit report for the year ended

June 30, 1999. The report contained one prior audit finding that was not implemented and 11 new audit findings, including a finding that at the University of North Dakota, 61 equipment items with the combined cost of more than \$174,000 were believed to have been taken by two former professors. The committee later learned the issue was resolved, as the University of North Dakota established a fair market value for each of the equipment items and payment was either received or the equipment item was returned.

The committee also received and accepted audit reports for each of the institutions under the control of the State Board of Higher Education. (See the attached appendix for a listing of all audit reports accepted by the committee.) The audit reports for the University of North Dakota and North Dakota State University for the years ended June 30, 1999, and 1998, included recommendations relating to the following findings:

- Budget Section approval was not obtained on certain construction projects financed with grants or donations, as required by NDCC Section 15-10-12.1.
- The university did not retain adequate supporting documentation to validate student applications for resident status.

North Dakota Century Code Section 15-10-12.1 provides that the Budget Section may establish guidelines regarding the types of gifts for minor improvements which do not require the approval of the Budget Section. The Budget Section has not established guidelines, and therefore Budget Section approval is required for all campus improvements and building projects financed with donations, gifts, and grants. The committee suggested the North Dakota University System provide recommendations to the 2001 Legislative Assembly regarding reasonable guidelines for Budget Section approval of higher education building projects financed with gifts, grants, and donations.

The committee learned institutions of higher education require a student to sign an affidavit when requesting resident status. The affidavit states it is a crime to falsify the information being provided. A representative of the University System provided testimony that implementing the State Auditor's recommendation would require copying and retaining various supporting documents, along with the student's application form, which would result in the need for additional time to process student applications and the creation of additional paperwork. A representative of the University System reported that rather than implementing the State Auditor's recommendation, the University System will consider conducting random checks to verify student claims of resident status.

OTHER REPORTS

University of North Dakota Aerospace Foundation

The committee requested that representatives of the University of North Dakota (UND) Aerospace Foundation and the University of North Dakota present a report regarding the status of the foundation's activities with the university.

Representatives of the UND Aerospace Foundation and the University of North Dakota reported to the committee that the Aerospace Foundation is conducting a review of its activities and will present a report to the university president who will make a decision regarding the future role of the foundation.

Although not required to be accepted by the committee, the UND Aerospace Foundation audit report for the years ended June 30, 1999, and 1998, was subsequently presented to the committee.

State Board of Reflexology

The committee learned the State Auditor's office was unable to obtain an audit report for the State Board of Reflexology, even though the board is required to submit one pursuant to NDCC Section 54-10-01. Representatives of the State Board of Reflexology indicated because the board receives a small amount of revenue, less than \$2,000 annually, the board could not justify the cost of an audit (the estimated cost of the audit was approximately \$600). A representative of the State Auditor's office reported to the committee that there is no penalty provided in statute for noncompliance with NDCC Section 54-10-01.

The committee requested that a representative of the State Board of Reflexology either appear before the committee or provide correspondence to the State Auditor's office indicating how the board intends to comply with NDCC Section 54-10-01. The State Board of Reflexology subsequently contracted with the State Auditor's office to conduct a financial audit of the board for the years ended June 30, 2000 and 1999. The audit report was received and accepted by the committee.

Ethanol Production Companies

North Dakota Century Code Section 10-19.1-152 provides that any corporation that produces agricultural ethyl alcohol or methanol and receives a production subsidy from the state must submit an annual audit report to the Legislative Audit and Fiscal Review Committee. Pursuant to this section the audit report for Alchem, Ltd., for the years ended December 31, 1999, and 1998, was filed with the committee and distributed to committee members.

Departmental Statements By Fund

The committee received copies of the departmental statements by fund reports for fiscal years ended June 30, 1998, and 1999. The reports were prepared by

the Office of Management and Budget and include a statement of assets, liabilities, and fund equity and a statement of revenues and expenditures by fund for each agency and institution of the state.

Department of Human Services Accounts Receivable Writeoffs

Pursuant to NDCC Sections 25-04-17 and 50-06.3-08, the Department of Human Services is required to present a report to the Legislative Audit and Fiscal Review Committee regarding accounts receivable writeoffs at the State Hospital, Developmental Center, and human service centers as of June 30 of each fiscal year. The department's report for fiscal year 1999 was received and accepted by the committee. Accounts receivable writeoffs as of June 30, 1999, were \$14,554,545 at the State Hospital, \$171,613 at the Developmental Center and \$128,322 at the human service centers. The department's report for fiscal year 2000 was also received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2000, were \$6,576,631 at the State Hospital, \$227,192 at the Developmental Center, and \$141,057 at the human service centers.

Electronic Bingo Card Marking Devices

The committee received a report regarding actions taken by the Gaming Commission to allow the use of electronic bingo card marking devices. Electronic bingo card marking devices are hand-held electronic devices that allow a bingo player to play up to 72 cards at one time. Electronic bingo card marking devices were field tested at five sites authorized by the Gaming Commission. The test began in October 1999 and concluded in May 2000. Test sites were located in Bismarck, Minot, Fargo, and Devils Lake. The committee expressed concern that the use of electronic bingo card marking devices may be an expansion of electronic gaming in North Dakota.

The committee learned the Gaming Commission planned to propose changes to the North Dakota Administrative Code relating to the use of electronic bingo card marking devices. The Legislative Council chairman, at the request of the Legislative Audit and Fiscal Review Committee, provided correspondence to the chairman of the Legislative Council's Administrative Rules Committee summarizing the testimony received by the Legislative Audit and Fiscal Review Committee and the committee discussion relating to the use of electronic bingo card marking devices in North Dakota. The rules proposed by the Gaming Commission were considered by the Administrative Rules Committee, and the committee did not take action to void the proposed rules.

Governmental Accounting Standards Board Statement Nos. 34 and 35

The committee learned that Governmental Accounting Standards Board Statement Nos. 34 and 35 will require significant changes in governmental accounting beginning with fiscal year 2002. The Governmental Accounting Standards Board statements require that depreciation expense and the value of infrastructure be reported in governmental financial statements. State agencies in North Dakota are currently required to capitalize any asset over \$750. The new accounting model will require agencies to depreciate assets that are capitalized. The committee learned in order to reduce the administrative burden on state agencies, the Office of Management and Budget plans to introduce legislation to be considered by the 2001 Legislative Assembly to amend NDCC Section 54-27-21 to increase the asset capitalization threshold for state agencies and institutions from \$750 to \$5,000. However, agencies will still be required to maintain adequate inventory records for assets with a value of less than \$5,000, pursuant to NDCC Section 44-04-07.

**AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE
DURING THE 1999-2000 INTERIM**

Agency	Audit Report Date	Meeting Date Accepted
Abstractors Board of Examiners	August 31, 1999 and 1998	January 18, 2000
Addiction Counseling Examiners, Board of	June 30, 1999 and 1998	May 22-23, 2000
Adjutant General	Two years ended June 30, 1998	July 13, 1999
Administrative Hearings, Office of	June 30, 1999 and 1998	May 22-23, 2000
Aeronautics Commission	June 30, 1999 and 1998	May 22-23, 2000
Ag PACE Fund	June 30, 1999 and 1998	January 18, 2000
Ag PACE Fund	June 30, 1998 and 1997	July 13, 1999
Agriculture, Department of	June 30, 1999 and 1998	October 16-17, 2000
Architecture, Board of	June 30, 1998 and 1997	October 5, 1999
Athletic Training Board	June 30, 1998 and 1997	October 5, 1999
Attorney General	June 30, 1999 and 1998	May 22-23, 2000
Attorney General's Office - Appendix B of American Cyanamid Settlement	September 11, 2000	October 16-17, 2000
Audiology and Speech-Language Pathology, Board of Examiners on	June 30, 1999 and 1998	October 5, 1999
Audiology and Speech-Language Pathology, Board of Examiners on	June 30, 1999 and 1998	May 22-23, 2000
Bank of North Dakota	December 31, 1998 and 1997	July 13, 1999
Bank of North Dakota	December 31, 1999 and 1998	May 22-23, 2000
Banking and Financial Institutions, Department of	June 30, 1998	January 18, 2000
Banking and Financial Institutions, Department of	June 30, 2000 and 1999	October 16-17, 2000
Bar Board	Two years ended June 30, 1999	October 16-17, 2000
Barber Examiners, Board of	August 31, 1997 and 1996	July 13, 1999
Barley Council	June 30, 1998 and 1997	October 5, 1999
Beef Commission	June 30, 2000	October 16-17, 2000
Beef Commission	June 30, 1999 and 1998	January 18, 2000
Beef Commission	June 30, 1998	July 13, 1999
Beginning Farmer Revolving Loan Fund	December 31, 1999 and 1998	May 22-23, 2000
Beginning Farmer Revolving Loan Fund	December 31, 1998 and 1997	October 5, 1999
Bismarck State College	June 30, 1999 and 1998	May 22-23, 2000
Building Authority	June 30, 1999 and 1998	January 18, 2000
Building Authority	June 30, 1998 and 1997	July 13, 1999
Child Support Enforcement Program (performance audit)	September 14, 2000	October 16-17, 2000
Children's Services Coordinating Committee	June 30, 1999 and 1998	May 22-23, 2000
Chiropractic Examiners, Board of	December 31, 1998	October 5, 1999
Chiropractic Examiners, Board of	December 31, 1999	May 22-23, 2000
Clinical Laboratory Practice, Board of	June 30, 1999 and 1998	October 16-17, 2000
Commission on the Future of Agriculture (COFA) (special audit)	December 31, 1999	October 16-17, 2000
Community Water Facility Loan Fund	December 31, 1999 and 1998	May 22-23, 2000
Community Water Facility Loan Fund	December 31, 1998 and 1997	October 5, 1999
Contracts for Services (performance audit)	July 1, 1996 through June 30, 1999	May 22-23, 2000
Corn Utilization Council	Two years ended June 30, 1998	July 13, 1999
Corrections and Rehabilitation, Department of	June 30, 1999 and 1998	May 22-23, 2000
Cosmetology, Board of	June 30, 1999	May 22-23, 2000
Cosmetology, Board of	June 30, 1998	October 5, 1999
Council on the Arts	June 30, 1999 and 1998	October 16-17, 2000
Counselor Examiners, Board of	June 30, 1998 and 1997	July 13, 1999
Dairy Promotion Commission	June 30, 2000 and 1999	October 16-17, 2000
Dairy Promotion Commission	June 30, 1998 and 1997	July 13, 1999
Dental Examiners, Board of	June 30, 1999 and 1998	May 22-23, 2000
Development Fund, Inc.	June 30, 1999 and 1998	January 18, 2000
Developmentally Disabled Facility Loan Program	December 31, 1998 and 1997	October 5, 1999
Developmentally Disabled Facility Loan Program	December 31, 1999 and 1998	May 22-23, 2000
Dickinson State University	June 30, 1999 and 1998	May 22-23, 2000
Dietetic Practice, Board of	September 30, 1999 and 1998	October 16-17, 2000
Division of Emergency Management	June 30, 1999 and 1998	May 22-23, 2000
Drivers License System (information technology application audit)	June 30, 2000	October 16-17, 2000
Dry Bean Council	Two years ended June 30, 1998	July 13, 1999
Dry Pea and Lentil Council	June 30, 1998	July 13, 1999
Dry Pea and Lentil Council	June 30, 2000 and 1999	October 16-17, 2000
Economic Development and Finance, Department of	June 30, 1999 and 1998	May 22-23, 2000
Education Standards and Practices Board	June 30, 1999 and 1998	October 16-17, 2000
Electrical Board	June 30, 1999 and 1998	January 18, 2000
Firemen's Association	April 30, 1999	October 5, 1999
Firemen's Association	April 30, 2000	October 16-17, 2000
Funeral Service, Board of	June 30, 1998 and 1997	July 13, 1999

Agency	Audit Report Date	Meeting Date Accepted
Game and Fish Department	June 30, 1999 and 1998	May 22-23, 2000
Governor's Office	June 30, 1999 and 1998	May 22-23, 2000
Guaranteed Student Loan Program	June 30, 1998 and 1997	July 13, 1999
Health, State Department of	June 30, 1999 and 1998	May 22-23, 2000
Hearing Instrument Dispensers, Board of Examiners for	June 30, 1999 and 1998	January 18, 2000
Highway Patrol	June 30, 1999 and 1998	May 22-23, 2000
Historical Society	June 30, 2000 and 1999	October 16-17, 2000
Historical Society	June 30, 1998	January 18, 2000
Housing Finance Agency	June 30, 1999 and 1998	January 18, 2000
Housing Finance Agency	June 30, 1998 and 1997	July 13, 1999
Human Services, Department of	June 30, 1999 and 1998	May 22-23, 2000
Indian Affairs Commission	June 30, 1998	May 22-23, 2000
Industrial Commission	June 30, 1999 and 1998	May 22-23, 2000
Information Technology Department (general controls audit)	June 30, 1999	January 18, 2000
Insurance Commissioner	June 30, 1999 and 1998	May 22-23, 2000
International Peace Garden, Inc.	December 31, 1998 and 1997	October 16-17, 2000
Job Service North Dakota	June 30, 1998	July 13, 1999
Job Service North Dakota	June 30, 1999 and 1998	January 18, 2000
Job Service North Dakota (performance audit)	September 15, 2000	October 16-17, 2000
Judicial Branch	June 30, 1999 and 1998	May 22-23, 2000
Labor Commissioner	June 30, 1999 and 1998	May 22-23, 2000
Lake Region State College	June 30, 1999 and 1998	May 22-23, 2000
Legislative Assembly	June 30, 1999 and 1998	October 5, 1999
Legislative Council	June 30, 1999 and 1998	October 5, 1999
Management and Budget, Office of	June 30, 1999 and 1998	May 22-23, 2000
Massage, Board of	June 30, 1997	July 13, 1999
Mayville State University	June 30, 1999 and 1998	May 22-23, 2000
Medical Examiners, Board of	December 31, 1998 and 1997	October 5, 1999
Medical Examiners, Board of	December 31, 1999 and 1998	October 16-17, 2000
Milk Marketing Board	June 30, 2000 and 1999	October 16-17, 2000
Milk Marketing Board	June 30, 1998 and 1997	October 5, 1999
Mill and Elevator Association	June 30, 1998 and 1997	July 13, 1999
Mill and Elevator Association	June 30, 1999	January 18, 2000
Minot State University	June 30, 1999 and 1998	May 22-23, 2000
Minot State University-Bottineau	June 30, 1999 and 1998	May 22-23, 2000
Municipal Bond Bank	December 31, 1998 and 1997	October 5, 1999
Municipal Bond Bank	December 31, 1999 and 1998	May 22-23, 2000
North Dakota State University	June 30, 1999 and 1998	May 22-23, 2000
North Dakota University System	June 30, 1999	May 22-23, 2000
Nursing Home Administrators, Board of Examiners for	June 30, 1998 and 1997	July 13, 1999
Nursing, Board of	June 30, 1999 and 1998	January 18, 2000
Nursing, Board of	June 30, 1998 and 1997	July 13, 1999
Occupational Therapy Practice, Board of	May 31, 1998 and 1997	July 13, 1999
Occupational Therapy Practice, Board of	June 30, 1999	May 22-23, 2000
Oilseed Council	Two years ended June 30, 1998	July 13, 1999
Oilseed Council	June 30, 2000 and 1999	October 16-17, 2000
Partnership in Assisting Community Expansion (PACE) Fund	June 30, 1998 and 1997	July 13, 1999
PACE Fund	June 30, 1999 and 1998	January 18, 2000
Parks and Recreation Department	June 30, 1999 and 1998	May 22-23, 2000
Payroll System (information technology application audit)	July 1, 1998, through September 25, 1998	July 13, 1999
Peace Officer Standards and Training Board	December 31, 1998 and June 30, 1998	October 5, 1999
Pharmacy, Board of	June 30, 1998 and 1997	October 5, 1999
Pharmacy, Board of	June 30, 1999 and 1998	May 22-23, 2000
Physical Therapists, Examining Committee for	Two years ended June 30, 1998	October 5, 1999
Plumbing, Board of	June 30, 1999 and 1998	January 18, 2000
Podiatry Examiners, Board of	December 31, 1998 and 1997	October 16-17, 2000
Potato Council	June 30, 1998 and 1997	October 5, 1999
Private Investigative and Security Board	June 30, 1998 and 1997	May 22-23, 2000
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 1999 and 1998	January 18, 2000
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 1998 and 1997	July 13, 1999
Professional Soil Classifiers, Board of Registration for	June 30, 1999 and 1998	October 5, 1999
Protection and Advocacy	June 30, 2000 and 1999	October 16-17, 2000
Protection and Advocacy	June 30, 1998	October 5, 1999
Psychologist Examiners, Board of	June 30, 1999 and 1998	May 22-23, 2000
Public Accountancy, Board of	June 30, 2000	October 16-17, 2000
Public Accountancy, Board of	June 30, 1999	October 5, 1999
Public Employees Retirement System	June 30, 1999 and 1998	January 18, 2000
Public Employees Retirement System	June 30, 1998	July 13, 1999

Agency	Audit Report Date	Meeting Date Accepted
Public Instruction, Department of	June 30, 1999 and 1998	May 22-23, 2000
Public Service Commission	June 30, 1999 and 1998	May 22-23, 2000
Real Estate Appraiser Qualifications and Ethics Board	June 30, 1999 and 1998	October 16-17, 2000
Real Estate Commission	June 30, 1998 and 1997	July 13, 1999
Real Estate Commission	June 30, 1999 and 1998	May 22-23, 2000
Real Estate Trust	June 30, 1998 and 1997	July 13, 1999
Reflexology, State Board of	June 30, 2000 and 1999	October 16-17, 2000
Respiratory Care, Board of	January 31, 1999 and September 30, 1998 and 1997	July 13, 1999
Retirement and Investment Office	June 30, 1999 and 1998	January 18, 2000
Retirement and Investment Office	June 30, 1998	July 13, 1999
Secretary of State	Two years ended June 30, 1998	July 13, 1999
Secretary of State	June 30, 2000 and 1999	October 16-17, 2000
Securities Commissioner	June 30, 2000 and 1999	October 16-17, 2000
Securities Commissioner	June 30, 1998	May 22-23, 2000
Seed Department	Two years ended June 30, 1998	October 5, 1999
Social Work Examiners, Board of	June 30, 1999 and 1998	May 22-23, 2000
Soybean Council	June 30, 1999 and 1998	January 18, 2000
Soybean Council	June 30, 2000 and 1999	October 16-17, 2000
Soybean Council	June 30, 1998	July 13, 1999
State Auditor's Office	June 30, 1999 and 1998	January 18, 2000
State College of Science	June 30, 1999 and 1998	May 22-23, 2000
State Fair Association	September 30, 1999 and 1998	May 22-23, 2000
State Fair Association	September 30, 1998 and 1997	October 5, 1999
State Treasurer	June 30, 1999 and 1998	May 22-23, 2000
Statewide Comprehensive Annual Financial Report (CAFR)	June 30, 1999	January 18, 2000
Statewide Single Audit	June 30, 1998 and 1997	July 13, 1999
Stockmen's Association	December 31, 1999 and 1998	May 22-23, 2000
Stockmen's Association	December 31, 1998 and 1997	October 5, 1999
Student Loan Trust	June 30, 1999 and 1998	January 18, 2000
Student Loan Trust	June 30, 1998 and 1997	July 13, 1999
Tax Commissioner	June 30, 1999 and 1998	May 22-23, 2000
Technology Transfer, Inc.	June 30, 1999 and 1998	January 18, 2000
Technology Transfer, Inc.	June 30, 1998 and 1997	July 13, 1999
Tourism Department	June 30, 1998	January 18, 2000
Tourism Department	June 30, 2000 and 1999	October 16-17, 2000
Transportation, Department of	June 30, 1999 and 1998	May 22-23, 2000
University and School Lands, Board of	June 30, 1998 and 1997	July 13, 1999
University and School Lands, Board of	June 30, 1999 and 1998	January 18, 2000
University of North Dakota	June 30, 1999 and 1998	May 22-23, 2000
Valley City State University	June 30, 1999 and 1998	May 22-23, 2000
Veterans Affairs, Department of	Two years ended June 30, 1998	July 13, 1999
Veterans Home	June 30, 1999 and 1998	January 18, 2000
Veterans Home	June 30, 1998	July 13, 1999
Veterinary Medical Examiners, Board of	June 30, 1998 and 1997	May 22-23, 2000
Vocational and Technical Education, Board for	June 30, 1999 and 1998	May 22-23, 2000
Water Commission	June 30, 1999 and 1998	May 22-23, 2000
Water Well Contractors, Board of	June 30, 1998 and 1997	July 13, 1999
Wheat Commission	June 30, 1998 and 1997	October 5, 1999
Wheat Commission	June 30, 2000 and 1999	October 16-17, 2000
Williston State College	June 30, 1999 and 1998	May 22-23, 2000
Workers Compensation Bureau	June 30, 1999 and 1998	January 18, 2000
Workers Compensation Bureau	June 30, 1998 and 1997	July 13, 1999
Workers Compensation Bureau (performance audit)	September 2000	October 16-17, 2000

LEGISLATIVE MANAGEMENT COMMITTEE

The Legislative Council delegated to the Legislative Management Committee the Council's authority under North Dakota Century Code (NDCC) Section 54-35-11 to make arrangements for the 2001 legislative session. Legislative rules are also reviewed and updated under this authority. The Legislative Council designated the committee as the Legislative Ethics Committee under Section 54-35-02.8, with the responsibility to consider or prepare a legislative code of ethics. The Legislative Council delegated to the committee: (1) the duty of the Legislative Council under Section 54-03-26 to determine the computer usage fee for legislators; (2) the power and duty of the Legislative Council under 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 permanent displays in Memorial Hall and use of the legislative chambers; (3) the authority under Section 54-06-26 to establish guidelines for use of state telephones by legislative branch personnel; and (4) the authority of the Legislative Council under Section 46-02-04 to determine the contents of contracts for the printing of legislative bills, resolutions, and journals. The Legislative Council assigned to the committee the study directed by Senate Concurrent Resolution No. 4005 (the state of the law and technology with respect to legislative redistricting).

Committee members were Senators Rod St. Aubyn (Chairman, until his resignation from the Legislative Assembly on August 30, 2000), Layton Freborg (who was appointed to replace Senator St. Aubyn), Joel C. Heitkamp, Aaron Krauter, Gary J. Nelson, and David E. Nething and Representatives Mike Timm (who was appointed Chairman after the resignation of Senator St. Aubyn), Rick Berg, Merle Boucher, John Dorso, Pam Gulleason, and David Monson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. After the 1999 legislative session, a legislative process questionnaire was distributed to every legislator. The questionnaire asked specific questions on legislative procedures and also requested comments on how to improve the legislative process. Throughout this report, references are made to the questionnaire and responses.

Legislative Guests

The committee reviewed the rules allowing guests on the floor. Senate Rules 205 and 360, as amended during the 1999 legislative session, limit a member to one guest on the floor during the morning session and one guest on the floor during an afternoon session,

during the time guests are restricted on the floor. House Rules 205 and 360 limit a member to one guest per day on the floor during the time guests are restricted on the floor. Senate and House Rules 360 both require a guest to be seated with the member, although Senate Rule 360 requires the guest to be seated at the time the legislative session convenes.

Committee members discussed the impact guests have on floor procedures, especially the distractions caused when guests move on and off the floor. Committee members also discussed the pressure placed on members when asked by another member to let that member's guests be seated with others on the floor.

The committee recommends amendment of Senate and House Rules 360 to provide that a member cannot have more than one guest on the floor during a morning session and one guest on the floor during an afternoon session, to require the guest to be seated with the member at the time the legislative session convenes, to prohibit any guest from leaving the floor during debate, and to prohibit any guest from being seated with a member after that member's original guest for that session leaves the floor. The committee also recommends amendment of Senate and House Rules 205 to remove the floor guest number restriction because that language duplicates the restriction language in Senate and House Rules 360. As reworded, Senate and House Rules 205 relate solely to duties of the sergeants-at-arms, and Senate and House Rules 360 contain the limitations on guests.

Attire of Legislative Guests

During the committee's review of responses to the legislative process questionnaire, discussion centered on comments concerning decorum and questionable dress by guests, i.e., students, on the floor. The committee reviewed the dress codes applied to legislative members, employees, and "pages for a day" and determined that legislative guests should be subject to a dress code in order to obtain the privilege of access to the floor. Committee members expressed concern, however, over the severe impact on high-school students (compared to employees) if a dress code identified required attire, e.g., suit and tie or dresses or skirts, or prohibited certain attire, e.g., blue jeans and T-shirts.

Although not a rules recommendation, the committee recommends the Legislative Council include in the legislative tour guide materials sent to all principals of North Dakota high schools a statement pointing out a student needs to be suitably attired to be seated with a member on the floor. The statement describes suitable attire as not including articles of clothing that depict, promote, or advertise violence or use of alcohol, tobacco, or other drugs, or that display pictures, writing, or representations that are obscene, profane, lewd, vulgar, or sexually suggestive, or that have rips, tears, or holes.

Nondebatable Motions During Debate

The committee discussed the use of a motion to close, limit, or extend debate. During recent legislative sessions, a motion to close, limit, or extend debate has been received during debate, and in most cases has been used to close debate and put the question to an immediate vote, and as such, is not subject to debate. This type of motion is not identified in Senate and House Rules 312, which identify the motions that are receivable during debate, nor is it listed in Senate and House Rules 317 among the motions that are nondebatable. Section 358 of *Mason's Manual of Legislative Procedure* provides that motions to close, limit, or extend debate are not debatable. Under Senate and House Rules 801, however, *Mason's* only applies when it is not inconsistent with the Senate and House and Joint Rules. Because Senate and House Rules 317 list nine motions that are nondebatable, it would appear that motions not listed would be considered debatable.

The committee recommends amendment of Senate and House Rules 312 and 317 to allow motions to close, limit, or extend debate to be received during debate and to provide that those motions are not subject to debate. This recommendation recognizes the treatment of motions to close or limit debate which has occurred during recent legislative sessions and eliminates any ambiguity as to whether such motions are nondebatable.

Votes Required for Certain Questions

The committee discussed whether motions to limit debate or to move the previous question should be decided by majority, rather than two-thirds, vote. Senate and House Rules 318(1)(j) provide a majority vote of the members present is the vote required for any question "for which another vote is not required by *another* rule." Subsection 3 of the *same* rule provides for a two-thirds vote of the members present for the previous question. Senate and House Rules 314, which describe the previous question, do not refer to a vote requirement, as do other rules.

The rules are silent on the vote required to approve a motion to close, limit, or extend debate, and thus Senate and House Rules 318(1)(j) apply, and the vote requirement is a majority of the members present.

The committee recommends amendment of Senate and House Rules 314 and 317 to provide that motions to limit debate or to move the previous question are decided by majority, rather than two-thirds, vote of the members present. This recommendation correlates the vote requirements with *Mason's*--Section 350 provides the previous question requires a majority vote, and Section 358 provides a motion to close, limit, or extend debate requires a majority vote.

Roll Call Vote

The committee discussed the number required to require a roll call vote. Of concern was whether the language in Senate and House Rules 320, referring to

ordering an "ayes and nays" vote when requested by one-sixth of the members present, limits the application to final passage. The language relates back to "ayes and nays" language in former Section 29 of Article IV of the Constitution of North Dakota. In that provision, however, the vote requirement referred to a vote "on any question" and was not limited to final passage. Similarly, the current provision, Section 13 of Article IV, requires a recorded vote "on any question" at the request of one-sixth of those members present.

The committee recommends amendment of Senate and House Rules 320 to provide that one-sixth of the members present may request a roll call vote (rather than ayes and nays), to provide that the results of a recorded roll call vote must be printed in the journal, and to eliminate the prohibition of any person from remaining by the Secretary's or Chief Clerk's desk when a vote is being called. A corresponding amendment is made to House Rule 323 to replace reference to "ayes and nays" with "roll call vote." Replacement of the "ayes and nays" with "roll call vote" updates language and removes any ambiguity as to what "ayes and nays" means, reference to a recorded roll call vote recognizes the distinction between requests for roll call and recorded roll call votes, and the prohibition on remaining near the front desk appears to be outdated due to electronic voting by members at their desks rather than front desk personnel taking a tally at the front desk.

Suspension of Rules

The committee discussed the apparent conflict between a two-thirds vote requirement to suspend rules and a majority vote requirement to amend rules. Section 285 of *Mason's* provides for suspension by majority vote. Although suspension differs from amendment because suspension is limited in scope and in time, recent practice has been to amend, suspend, or extend various deadlines for a limited time or for a limited purpose, and the different vote requirements may have been the reason for this practice.

The committee recommends amendment of Senate and House Rules 324 to provide that the rules may be reconsidered or suspended by a vote of a majority of the members present, rather than by a vote of two-thirds of the members-elect. Corresponding amendments are made to Senate and House Rules 318(1) and (4). This change does not affect the two-thirds vote requirement to reconsider or suspend a joint rule, as provided by Joint Rule 105.

Floor Amendments

The committee discussed whether a measure on the calendar for final passage as the result of a motion to concur or not concur in amendments by the other house should be subject to amendment on the floor.

The committee recommends amendment of Senate and House Rules 333 to provide that an amendment may not be received on second reading of a measure on

the calendar as the result of a motion to concur or not concur in amendments by the other house. The effect of this recommendation is to treat these measures the same as measures reported from conference committees.

Transmittal to Other House

The committee reviewed the procedure for transmitting measures to the other house. Senate and House Rules 346 provide that the Secretary of the Senate and Chief Clerk of the House retain a measure until the end of the next legislative day after second reading, except on certain days. This is to allow a motion for reconsideration to be made within the normal one-day period before the two-thirds vote requirement arises. The rules require immediate messaging on the 33rd legislative day, and the question became why not on the 34th legislative day (crossover), so as to avoid motions for immediate transmittal. Research revealed that in 1987, crossover was changed from the 33rd legislative day to the 34th legislative day in Joint Rule 203, without discussion of the reference in Senate and House Rules 346.

The committee recommends amendment of Senate and House Rules 346 to provide that on the 34th, rather than 33rd, legislative day, measures are to be transmitted immediately upon adjournment of that day's session unless further action is pending.

Resolution Introduction Deadlines

The committee discussed the deadlines for introducing resolutions proposing constitutional amendments. Senate and House Rules 402 provide that amendments to the Constitution of North Dakota may not be introduced after the 18th legislative day, and amendments to the Constitution of the United States may not be introduced after the 31st legislative day. Before 1983 the deadline for introducing both types of amendments was the 33rd legislative day. The earlier deadline for amendments to the state constitution was established in an attempt to alleviate problems faced by the Joint Constitutional Revision Committee in scheduling meetings and coordinating constitutional revision resolutions that would appear on the ballot. That committee was abolished by rules amendments approved in 1996.

The committee recommends amendment of Senate and House Rules 402 to provide that resolutions proposing amendments to the Constitution of the United States may not be introduced after the 18th legislative day and amendments to the Constitution of North Dakota may not be introduced after the 31st legislative day.

Bill Introduction Deadlines

The committee discussed the wording of Senate and House Rules 402, especially with respect to whether the Majority and Minority Leaders are subject to the general bill introduction deadlines.

The committee recommends amendment of Senate and House Rules 402 to clarify that the Majority and

Minority Leaders are subject to the general bill introduction deadlines.

Copies of Bills and Resolutions

The committee discussed the suggestion of House employees to review the procedure for bill numbering and sponsor identification with a view toward reducing the time necessary to disassemble and reassemble bills and resolutions at the time of introduction and to reenter information during the entire legislative process. Under current procedure, two covered copies and 13 regular copies of a measure are filed with the bill clerk for introduction. The bill clerk accesses the bill status system, enters the names of the sponsors as identified on the measure's introduction sheet, and assigns the bill or resolution number. The first two pages are then printed and copies are made to replace the original pages on the 15 copies. The copies are then distributed in accordance with Senate and House Rules 404.

The rules also refer to the "original" copy of a bill or resolution. Reference to "original" relates back to when NDCC Section 54-03-17 required each page of a bill to be impressed with a seal. To save time, only the "original" copy was impressed with the seal. This statute was repealed effective January 1, 1997.

The committee recommends amendment of Senate and House Rules 404 and 405 to reduce the number of copies to be filed with the front desk force to one covered copy and one regular copy and to replace references to the "original" copy with references to the "covered" copy. This change is part of a procedural revision that should further improve the efficiency of introduction. (In 1999 approximately 67 percent of the bills introduced were under three pages in length, and thus entire copies were replaced when the first two pages were replaced.) The desk force and the Legislative Council office can continue to operate under an informal procedure whereby a legislator will receive the covered copy and two copies of bills of not more than two pages, and additional copies when bills exceed two pages in length to reduce time required by desk force personnel to photocopy complete copies of lengthy bills. Reference to a "covered" copy is intended to provide one easily recognizable copy on which status information can be entered.

With respect to bill covers, 12 different colors are used to identify bills, concurrent resolutions, and resolutions, as introduced and as engrossed. Colors are also different between the Senate and the House. Status information is recorded on the cover as the measure proceeds through the legislative process. This information is manually added each time an action occurs, and is recopied each time a cover changes, e.g., when amendments are approved and the measure is engrossed.

Although not a rules amendment, the committee recommends the colors of bill covers be reduced to four. Yellow covers would continue to identify Senate bills and

blue covers would continue to identify House bills (with no change in color if engrossed). Ivory covers would identify Senate resolutions and gray would identify House resolutions (with no distinction between concurrent resolutions and resolutions, nor between original and amended versions). This reduction in colors is intended to reduce the need to manually transfer bill status information as the measures proceed through the Legislative Assembly. Documentation of this change is provided through a revision of the committee clerk's job description, which is further explained under **SESSION ARRANGEMENTS, Committee Clerks**.

Special Copies of Bills and Resolutions

Under Senate and House Rules 404, any statewide organization or association paying a subscription fee established by the committee may receive a copy of each introduced bill or resolution. Orders and payments for this service must be placed with the Legislative Council by December 15. No one subscribed to this service during the 1997 or 1999 legislative session (for \$650 and \$700, respectively).

The committee recommends amendment of Senate and House Rules 404 to delete the provisions for this subscription service.

Appropriations Committee Meetings

During the review of responses to the legislative process questionnaire, the committee discussed suggestions to change the standing committee structure or procedures. The committee focused on a suggestion that the Appropriations Committees meet between the organizational session and the regular session. Suggestions for the subject matter of these meetings included handling routine administrative matters, receiving budget information from the Legislative Council staff, conducting hearings on bills appropriating funds to small agencies, and conducting hearings on bills appropriating funds for major budget items such as higher education, public instruction, or human services. Regardless of how the time is used, these meetings were suggested as a way to make available more time for the Appropriations Committees to perform their responsibilities.

The committee recommends creation of Senate and House Rules 504.1 to authorize the Appropriations Committees to meet for not more than five calendar days during the period after the organizational session has adjourned and the regular session is convened. The majority leaders are given the responsibility to determine when the committees will meet and the chairmen would cause notice of the meetings to be posted. The majority leader is given the authority to call the meetings because the majority leader manages workload and coordinates committee meetings with the chairmen. Although no subject matter restrictions are included in the rules, committee members expressed the intent that votes would not be taken during these meetings, and legislators who are not Appropriations Committee members

would have the ability to testify on bills when the legislative session convened.

The committee also discussed the compensation of members of committees that meet during this time period, and the committee's recommendation is described under **Recommended Bill - Committee Meeting Compensation**.

Committee Reports

The committee discussed whether there should be a procedure for acting on amendments immediately after committee reports are received late in the legislative session similar to that provided for immediate second reading and final passage after action on amendments. If allowed, this would eliminate motions, which have become routine, to suspend the rules to allow this procedure.

The committee recommends amendment of Senate and House Rules 601 to provide that after the 55th legislative day, proposed amendments must be placed on the calendar on the sixth order of business immediately after the report of the committee is received. Without this procedure, proposed amendments would continue to be placed on the calendar for the next legislative day on the sixth order of business unless a motion is made to suspend the rules. Under Senate and House Rules 507, all bills and resolutions of the other house must be reported back by the 55th legislative day, and under Senate and House Rules 601(3)(g) after the 55th legislative day, all measures are placed on the calendar for second reading and final passage immediately after action on amendments.

Consideration of Divided Committee Reports

The committee discussed the procedure for voting on majority and minority reports of committees. Under Senate and House Rules 601, divided reports are placed on the seventh order of business and a motion is to be received that the report of the minority be substituted for the majority committee report. The rules do not specify the procedure to follow after the first vote. The House has followed a procedure whereby if the minority report is adopted, the report is substituted for the majority report and, without any additional vote, is placed on the calendar on the 11th or 14th order of business. If the minority report is not adopted, the majority report is deemed adopted and is placed on the calendar on the 11th or 14th order of business.

The committee recommends amendment of Senate and House Rules 601 to recognize the procedure followed by the House in 1999. The effect is to provide a procedure that outlines the course to follow and eliminates the need for a separate vote on the majority report if the minority report is rejected.

Votes on Divided Committee Reports

The committee discussed the requirements for issuing divided committee reports. Under Senate and

House Rules 602, a minority report must be signed by at least two to four members who voted against the majority report, depending on the house and on the committee. At issue was how to determine how committee members voted on majority and minority reports.

The committee recommends amendment of Senate and House Rules 602 to require, in the case of divided committee reports, each report to identify who voted for that report and to require a recorded roll call vote in committee on each report. The committee also recommends amendment of Senate and House Rules 506 to ensure the committee's minutes reflect the recorded roll call vote on each report.

Signatures on Divided Committee Reports

The committee discussed the practice of a member voting for and signing a majority report and then voting for but not signing a minority report, or voting for more than one minority report, or signing more than one minority report.

The committee recommends amendment of Senate and House Rules 602 to provide that a minority report must be signed by a member who voted against the majority report and who has not voted for or signed any other report, and to provide that a member may not vote for a report and refuse to sign that report.

Return of Vetoed Bills

The committee discussed the procedure for the Governor to return vetoed bills. Section 9 of Article V of the Constitution of North Dakota, effective July 1, 1997, provides the Governor must return for reconsideration a vetoed bill "within three legislative days after its delivery to the governor." The former timeframe was three days, Sundays excepted, after presentment to the Governor. Joint Rule 209 repeats the former timeframe.

The committee recommends amendment of Joint Rule 209 to change the timeframe for returning vetoed bills to that contained in Section 9 (three legislative days after delivery to the Governor).

Fiscal Notes

The committee reviewed the process for requesting state agencies to prepare fiscal notes. To coordinate the fiscal note process, the Legislative Council staff requests the preparation of fiscal notes. This procedure has evolved to one entity (the Legislative Council) requesting the note so as to avoid situations in which notes are received without notice as to who requested it, why it was requested, and whether it should be distributed. Also, if fiscal notes are delivered directly from the agency to legislators, those notes are not attached to the bill, are not distributed to those persons who receive fiscal notes, and are not entered in the budget status system.

The committee recommends amendment of Joint Rule 501 to designate the Legislative Council as

the entity that requests fiscal notes. The amendment also eliminates the requirement that the fiscal note request be in writing and provides that the request be on the proper request form. This change recognizes the new budget reporting system, whereby fiscal note requests are to be made electronically to the agencies, accompanied with an electronic version of the bill or resolution having the fiscal effect.

Executive Agency and Supreme Court Bills

Joint Rule 208 authorizes executive agencies and the Supreme Court to file with the Legislative Council those bills they wish to have introduced no later than December 10 before the ensuing regular session. Each bill is deemed introduced by the standing committee with general jurisdiction over the subject matter of the bill. The committee discussed the fact that December 10, 2000, falls on a Sunday. In 1994 when December 10 fell on a Saturday, agencies were required to fill their bills by Friday, December 9. The committee discussed the appropriateness of a specific date deadline, which generally falls on a different day every year, and a specific day deadline, which would remain the same from session to session. The committee also was cognizant of the fact that NDCC Sections 55-44.1-06 and 54-44.1-07 require appropriation bills to be presented at the organizational session.

The committee recommends amendment of Joint Rule 208 to provide that the deadline for executive agencies and the Supreme Court to file bills with the Legislative Council is the close of business on the day after adjournment of the organizational session. With this deadline, the calendar day on which December 10 falls is no longer significant--the organizational session traditionally adjourns on a Thursday and thus the deadline will be Friday. The amendment also provides that the Legislative Council is to deliver the prefilled bills to the appropriate house, rather than to the presiding officer, for recording. Under Senate and House rules, bills are delivered to the Secretary of the Senate or Chief Clerk of the House, and in fact are delivered to the appropriate desk force person for recording.

The committee received a request from the Office of Management and Budget relating to the preparation of appropriation bills in time for the organizational session. The Office of Management and Budget reported that the office could not meet the statutory deadline for the preparation of the bills. The committee recommends the Legislative Council staff be requested to receive appropriation bills implementing the Governor's budget after the statutory deadline but by December 15, 2000.

Legislative Rules Book

The committee approved a proposal to reprint the Legislative Rules Book and incorporate rules changes approved at the organizational session, with appropriate grammatical, style, obsolete reference, and numbering

changes to integrate new rules; reorder and renumber rules as appropriate; and reflect current procedures.

Other Rules Proposals Considered

The committee reviewed several other proposed rules amendments. These included (1) amendment of Senate and House Rules 205 and 360 to ban all guests during floor sessions (which was not discussed due to the discussion leading to the committee's recommendation concerning limitations on guests); (2) amendment of Senate Rules 201 and 202 and Joint Rules 207, 208, 501(4), and 802 to transfer day-to-day responsibilities of presiding over the Senate to the President Pro Tempore; (3) amendment of Senate and House Rules 347 to provide a motion to reconsider amendments after the end of the next legislative day following the action requires a two-thirds vote of the members-elect; and (4) amendment of Senate and House Rules 602 to allow only one minority report.

Recommended Bill -

Committee Meeting Compensation

As described under **Appropriations Committee Meetings**, the committee recommends that the Appropriations Committees be authorized to meet before the Legislative Assembly convenes. The committee determined that the compensation for attending committee meetings that are so closely related to the legislative session should be the same as that received during the session. Under NDCC Section 54-03-20, legislators receive \$111 for each calendar day during a legislative session, while under Section 54-35-10, legislators receive \$75 for each day while attending a Legislative Council interim committee meeting.

The committee recommends Senate Bill No. 2048 to amend NDCC Section 54-03-20 to provide that a legislator is entitled to receive the same compensation for attending a meeting of a legislative committee between the organizational session and the regular session, as authorized by legislative rule (Senate and House Rules 504.1), as the legislator is entitled to receive during a legislative session.

Recommended Bill - Delivery of Bills

As described under **Return of Vetoed Bills**, the committee discussed the procedure for the Governor to return vetoed bills. Although current Section 9 of Article V of the constitution addresses the time the Governor has to sign or veto bills, the section does not require these bills to be filed with any official. Former Section 9 required vetoes to be filed with the Secretary of State within 15 days after adjournment but did not otherwise require bills to be filed with the Secretary of State. That void was addressed when NDCC Section 54-07-01.5 was enacted in 1987. That section provides the Governor is to file bills, which are not vetoed, within five days, Sundays excepted, after presentation if the Legislative Assembly is in session, or within 15 days

after presentation if the Legislative Assembly is not in session. These time periods generally coincided with the time allowed to veto a bill under Section 9 as it existed before July 1, 1997 (the statutory provision allowed the Governor two additional days during session to file bills).

Section 9 also raises issues regarding the procedure for "filing" vetoed items or bills. Former Section 9 provided for filing a measure vetoed after adjournment, along with the objections, with the Secretary of State. Current Section 9 only refers to "returning" vetoed measures to the house of origin for reconsideration and for entry of the Governor's objections in the journal.

The committee recommends House Bill No. 1050 to address the lack of procedures under Section 9 with respect to filing of bills, whether signed, unsigned, or vetoed, with the Secretary of State. North Dakota Century Code Section 54-07-01.5 is amended to require each bill not vetoed by the Governor to be filed with the Secretary of State within five legislative days after the bill has been delivered to the Governor. (A bill vetoed by the Governor must be returned to the house of origin within three legislative days for reconsideration.) If the Legislative Assembly is not in session, the Governor is to cause each bill delivered to the Governor to be filed with the Secretary of State within 15 days, Saturdays and Sundays excepted, after delivery of the bill to the Governor. (This is the same timeframe the Governor has to veto bills if the Legislative Assembly is not in session.) This procedure applies to every measure delivered to the Governor (whether vetoed or not) which, as a result of adjournment of the Legislative Assembly, cannot be "reconsidered" as provided by Section 9. This bill eliminates the conflict between the time periods specified in Section 9 of Article V of the constitution and the current NDCC Section 54-07-01.5.

LEGISLATIVE INFORMATION SERVICES

Personal Computer Usage Fee

During the 1995-96 interim, the Legislative Management Committee developed a policy on use of personal computers by legislators. The policy describes statutory restrictions on use of personal computers, governs use of privately owned personal computers to access legislative information systems, and governs use of state-owned personal computers.

During the 1997-98 interim, the committee revised the policy to recognize the personal use option allowed legislators under NDCC Section 54-03-26, which was enacted in 1997. Under the revised policy, a legislator using a computer under the personal use option: (1) cannot use the computer for any political purpose prohibited by Section 16.1-10-02; (2) must recognize that sufficient capacity needs to remain on the computer for software necessary to access North Dakota's legislative information system; (3) must recognize that legislative software cannot be removed and capacity must remain for upgrades to that software; (4) must recognize

that any personal use not require additional memory or disk space; (5) must recognize that the legislator is responsible for the cost of installing and maintaining nonlegislative software; (6) must recognize that the Legislative Council staff is not responsible for installing or supporting nonlegislative software; (7) must recognize that the legislator may be responsible for paying costs in reinstalling legislative software that does not function properly as the result of nonlegislative software; and (8) must recognize that the Legislative Council staff may remove any nonlegislative software in order to properly install or operate legislative software. Under authority of Section 54-03-26, the committee set a monthly fee of \$10 as the fee for the personal use option.

The committee makes no recommendation concerning a change in the policy on use of personal computers or the fee for the personal use option.

Legislative Systems

The committee discussed suggestions of legislative employees to revise the reporting systems to reduce duplication of entries in the bill status system and the journal system. Under current systems, the bill clerk selects menu options to post floor actions in the bill status system, which is used to track bills through the process, and the desk reporter enters status actions in journal modules, which are compiled as the daily journal at the end of the day.

The committee authorized enhancement of the reporting systems so that bill status actions could be taken from journal modules or the journal system. When the journal is finalized at the end of the day, the programs would be run to print the journal, transfer the journal to the Legislator's Automated Work Station (LAWS) system, and transfer actions to the bill status system. Although this enhancement would eliminate the "real-time" feature of the bill status system (which is available over the Internet), vote records would continue to be available immediately to legislators through the LAWS system and others obtaining information from the real-time bill status information system (LRGO) on a subscription basis, as described under **On-Line Bill Status System Access**. Other actions would not appear in the system until the journal is "run" at the end of the day.

Another result of taking the bill status actions from the journal system is to reduce the workload of the bill clerk to that of maintaining bill introduction and bill signout records. As reported under **SESSION ARRANGEMENTS, Session Employee Positions**, the committee determined that before the position of bill clerk is eliminated or consolidated into other desk force positions, experience with the enhanced systems would reveal whether adequate workload exists for the number of positions and whether adequate backup is provided in case an employee is absent.

LAWS System

During the 1987-88 interim, the Legislative Management Committee authorized four legislators in each house to use computer terminals in place of bill racks. The legislative applications available to those legislators were designated the LAWS system. The system contained four basic components--bill status, committee hearings, daily calendars, and personal services (which included telephone messages received by the telephone attendants).

The LAWS system has been enhanced over the years to include more features and to allow use of personal computers rather than mainframe terminals. Enhancements include display of the current text of measures being considered on the calendar through use of the voting system; use of e-mail to send messages to other legislators with workstations; storage of telephone messages in caller sequence; installation of a graphical user interface to provide personal computer features, e.g., icons, pull-down menus, and radio buttons; display of full text of statements of purpose of amendments; use of proportional spacing in bills, journals, and other legislative documents; and use of split-screen capability to allow viewing of the text of amendments next to bills.

Through controlled growth, the LAWS system is now available to all legislators. In 1991, 24 members had access to the system; in 1993, 50 members had access; in 1995 one member from each caucus received a notebook-style personal computer for use during the 1995 legislative session and 50 other legislators used terminals to access the LAWS system; in 1997, 75 members used notebook-style personal computers to access the system; and in 1999, 132 members took advantage of accessing the system.

On-Line Bill Status System Access

The bill status system began in 1969 as a Legislative Council computerized in-house report that provided day-old information concerning the progress of bills and resolutions through the legislative process. The system has grown to an on-line system providing up-to-the-minute information on the status of bills and resolutions for use by legislative personnel and private subscribers outside the legislative branch. In 1998 the Legislative Management Committee accepted a proposal of the North Dakota University System to provide bill status information and a legislative tracking service to users outside the legislative branch during the 1999 legislative session. The University System provided bill status information and the legislative tracking service, including help desk support, to the University System and entities other than state agencies, and the Information Services Division (now the Information Technology Department) provided help desk support to state agencies obtaining access to bill status information through the legislative branch web page, the bill status system, and the legislative tracking service. The Legislative Council staff

provided services to users within the legislative branch and maintained the information in its bill status system.

The committee reviewed the operation of the on-line bill status information arrangement. Three different services were offered to the public and state agencies during the 1999 legislative session: (1) the Legislative Council web pages, which include bill text and status, subject index, bill and journal text, committee hearing schedules, and daily calendars on the legislative branch web site <http://www.state.nd.us/lr> at no charge for access; (2) the legislative bill tracking system (LBTS), which allows subscribers to track specific sets of bills throughout the legislative session (state agencies set up 374 user accounts at no charge and private subscribers set up 59 user accounts for a subscription fee starting at \$300); and (3) the bill status information system (LRGO), which provides information available from the Legislative Council web pages on a "real-time" basis (about 50 state agencies obtained access through the Information Technology Department without charge, and two private subscribers each paid a \$300 subscription fee).

The committee authorized continuation of the arrangement whereby the University System provides bill status information to entities outside the legislative branch.

Subscription Fees for Printed Documents

Beginning with the 1989-90 interim, the Legislative Procedure and Arrangements Committee and subsequently the Legislative Management Committee has reviewed the cost of providing various printed documents to persons outside the legislative branch. Subscription fees have been established which, generally, approximate the cost of printing a set of the relevant documents during the previous legislative session, e.g., the cost of printing the documents is divided by the number of sets of documents printed. State agencies and institutions are not charged the fees for copies of bills and resolutions as introduced and printed, daily journals, daily calendars, and committee hearing schedules, nor are representatives of the media as determined under Joint Rule 802.

Bill Status Report Subscription

The printed version of the bill status system provides information on the progress of bills and resolutions, the sponsors of measures, and an index to the subject matter of measures. In 1991 the number of printed reports distributed without charge was substantially reduced (state agencies could print their own reports through arrangements with the Information Technology Department, rather than receive printed bill status reports from the bill and journal room) and a subscription fee was first established. Twelve entities paid a \$310 subscription fee (one paid \$420 to receive the reports by mail) to receive these reports during the 1999 legislative session. 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 2001 bill status report and pay a \$305 subscription fee, \$415 if mailed. The committee also determined, however, that two copies of the bill status report should be provided to the press room in the State Capitol without payment of subscription fees.

Legislative Document Distribution Program

Starting with the 1983 legislative session, the Legislative Assembly has provided bills, resolutions, journals, and bill status reports to academic, special, and public libraries throughout the state. The program consists of sending on a weekly basis, through United Parcel Service, copies of introduced bills and resolutions, daily journals, and bill status reports. The program peaked in 1989, when 51 libraries participated; seven libraries participated in the program in 1999.

Since the 1989-90 interim, the Legislative Management Committee has determined that participating libraries should pay the approximate cost of printing their bill status reports, and the Legislative Assembly should continue to absorb the cost of printing the other documents and shipping the materials. The subscription fee was \$310 in 1999, with a \$25 late fee.

The committee approved continuation of the program during the 2001 legislative session, with a subscription fee of \$305, and a \$25 late fee if the subscription is after the deadline for subscribing.

Photocopy Subscription Service

Since 1983 any statewide organization or association paying a subscription fee established by the committee would receive a copy of each introduced bill or resolution. No one subscribed to this service during the 1997 or 1999 legislative session (for \$650 and \$700, respectively). The committee recommends repeal of this subscription service, as described under **LEGISLATIVE RULES, Special Copies of Bills and Resolutions**.

Bills, Resolutions, and Journals Subscriptions

During the 1985-86 interim, the Legislative Procedure and Arrangements Committee adopted the policy that the bill and journal room should mail a small number of bills and resolutions at no charge to a requester. If the request is for a large number or for all the bills and resolutions introduced, the requester should pay the postage. During the 1991-92 interim, the Legislative Management Committee determined that anyone who requests a set of bills, resolutions, or journals should pay a fee to cover the cost of printing a set of bills, resolutions, and journals and the cost of mailing these documents. During the 1999 legislative session, 73 entities subscribed to pick up a set of bills and resolutions from the bill and journal room and three paid to receive the set by mail; 35 entities subscribed to pick up a set of journals and three paid to receive a set by mail; and 21 entities subscribed to receive the journal index.

The committee established the following fees with respect to receiving a copy of every bill and resolution introduced and a copy of the daily journal of each house

during the 2001 legislative session--\$110 for a set of bills and resolutions as introduced and printed or reprinted, \$220 if mailed; \$200 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and reengrossed bills and resolutions, \$375 if mailed; and \$55 for a set of daily journals of the Senate and House, \$165 if mailed. The fee for the journals includes final covers after the legislative session adjourns. The committee established a subscription fee of \$25 to receive the index to the Senate and House journals for the 2001 legislative session.

The committee continued the policy that anyone can receive no more than five copies of a limited number of bills and resolutions without charge.

Committee Hearing Schedules and Daily Calendars Subscription

The committee decided to continue the practice of making committee hearing schedules and daily calendars available at no charge. The committee also determined that if a request is received for the mailing of daily calendars or committee hearing schedules, the policy followed during the 1999 legislative session should continue, and a fee should be imposed to cover the cost of mailing. During the 1999 legislative session, three entities paid to receive the hearing schedules by mail and one entity paid to receive the calendars by mail. The committee established a subscription fee of \$55 for mailing a set of daily calendars of the Senate and House and a subscription fee of \$30 for mailing a set of the weekly hearing schedules for Senate and House committees.

LEGISLATIVE SPACE USE

Legislative Chambers and Memorial Hall

Since 1981 the Legislative Council has delegated to the committee the responsibility under NDCC Section 54-35-02(8) to control the legislative chambers and any permanent displays in Memorial Hall. In exercising this responsibility, the committee has adopted guidelines for use of the legislative chambers and displays in Memorial Hall.

Under the guidelines, last approved by the committee in January 1996, the first priority for use of the chambers is for the legislative branch. When the Legislative Assembly is not in session, the chambers may be used by other groups or organizations if certain requirements are met. A state agency may use the chambers for official purposes of that agency. Any other group or organization may use the chambers for mock legislative sessions if the group or organization has not employed a registered lobbyist or contracted for independent lobbying services by a registered lobbyist within two years before the request for use. Any use cannot interfere with legislative branch activities; the sponsor of the function must make suitable arrangements with the Office of Management and Budget; the sponsor must assume full responsibility for the care of the chambers;

and prior approval must be obtained from the Legislative Management Committee or from the director of the Legislative Council or the director's designee.

During its review of the guidelines, the committee approved requests for use of both chambers by the North Dakota Intercollegiate State Legislature in October 1999, by the North Dakota Family Alliance in July 2000, and by the North Dakota High School Activities Association State Student Congress in November 2001, and use of the House chamber by the Hugh O'Brian Youth Foundation in June 2000 and by the Silver-Haired Education Association in August 2000.

Under the guidelines, any permanent display in Memorial Hall is to be reviewed annually. Since removal of two statues in 1984, Memorial Hall does not contain any permanent display.

Legislative Committee Rooms

Joint Rule 803 provides that during a legislative session committee rooms may be used only for functions and activities of the legislative branch, but the Secretary of the Senate or the Chief Clerk of the House may grant a state agency permission to use a room at times and under conditions not interfering with the use of the room by the legislative branch. With respect to use during the interim, NDCC Section 48-08-04 applies and provides that committee rooms may not be used without authorization of the Legislative Council or its designee.

During the 1997-98 interim, the committee recommended, and the Legislative Council approved, a policy governing approval of use of committee rooms during the interim similar to that governing use of the chambers.

The committee heard testimony as to the difficulty of applying the guidelines in certain circumstances. One question was whether the requirement that committee rooms may not be provided for use by a group or organization if there are other suitable facilities on the Capitol grounds or in a privately operated facility applies when a state agency sponsors the use, e.g., blood drives, Boy Scouts, Girl Scouts, and United Tribes. Another question was whether federal officials could be granted use of committee rooms. A third question was whether individual legislators could request use of legislative committee rooms for nonlegislative functions.

The committee recommends amendment of the *Guidelines for Use of Legislative Committee Rooms, North Dakota State Capitol* to provide that the requirement that committee rooms may not be provided if there are other suitable facilities applies only to a use not by a state agency or not sponsored by a state agency; to allow a federal official to use a committee room for educational and informational meetings that address issues affecting the state if the official makes suitable arrangements with the Office of Management and Budget and the use is sponsored by a state agency; and to clarify that a legislator may use a committee room for any legal purpose and may sponsor use by a group or organization. Although the use by a legislator may be for any legal purpose, e.g., not for political purposes as

prohibited by NDCC Section 16.1-10-02, use sponsored by a legislator must meet the other requirements of the guidelines, i.e., the planned function does not interfere with the business or activities of the legislative branch, there is no other suitable facility on the Capitol grounds or in a privately operated facility, and the group or organization cannot advocate the introduction of legislation or encourage or oppose the enactment of legislation or any decision on a matter before the Legislative Assembly or Legislative Council or any legislative committee.

The committee also discussed proper use of the press studio on the ground floor of the legislative wing. The committee recommends amendment of the guidelines to provide that the press studio on the ground floor of the legislative wing may not be used during a legislative session by anyone other than a legislator and may not be used during other periods by anyone other than a legislator or an elected state official except as authorized by the director of the Legislative Council or the director's designee. For the first time, guidelines will be in place for use of the press studio.

Senate Locker Room - Security Center

The committee approved a request from the Facility Management Division to remodel the Senate locker room to provide space for a command center for security monitors relocated from the Heritage Center to the State Capitol. Twelve lockers were moved from the north end of the locker room to the south end of the middle row and to the southeast corner of the locker room. By being located in this room, the Highway Patrol security person has a direct view of the appointed and elected officials' parking lot and is near the center of the Capitol.

TELEPHONE USAGE GUIDELINES

Under NDCC Section 54-06-26, a state official or employee may use a state telephone to receive or place a local call for essential personal purposes to the extent that use does not interfere with the functions of the official's or employee's agency. When a state official or employee is away from the official's or employee's residence for official state business and long-distance tolls would apply to a call to the city of residence, the official or employee is entitled to make at least one long-distance call per day at state expense. A state agency may establish guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

The committee makes no recommendation for guidelines defining reasonable and appropriate use of state telephones for essential personal purposes.

CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS

Background

Under NDCC Section 46-02-04, the Legislative Council is authorized to determine the contents of

contracts for printing legislative bills, resolutions, and journals. The State Purchasing Division prepares the requests for bids for the printing of these items in accordance with the requirements set by the committee.

Contract Contents

The committee determined that the consolidated contract for printing bills and resolutions, for printing daily journals, and for providing bill and journal room services should be continued for the 57th Legislative Assembly. This type of contract was first entered for the 55th Legislative Assembly (1997). The specifics relating to operation of the bill and journal room are described under **SESSION ARRANGEMENTS, Bill and Journal Room Services**.

With respect to the contract for printing bills, resolutions, and journals for the 57th Legislative Assembly, the committee reduced the number of copies set aside for permanent journals from 30 to 27, in recognition of the rules change approved by the Senate and House in 1998 (after the contract had already been awarded for the 56th Legislative Assembly). The committee also reduced the number of copies of journals printed from 900 to 850 and reduced the number of journal covers from 280 for each house to 50 for each house, in recognition of the inventory of these items remaining from 1999. The committee also approved increasing the size of the holes in the bills from .25 inch to aid in reading bills placed in various types of binders.

The committee also included a provision for delivering the permanent journal indexes to the Legislative Council (for distribution to legislators and entities that subscribed to receive the journal indexes).

Only one firm--Quality Printing Service, Bismarck--submitted a bid. The committee accepted the bid by Quality Printing Service for printing bills, resolutions, and journals on recycled paper and operating the bill and journal room during the 2001 legislative session.

LEGISLATIVE WING RENOVATION PROJECTS

Background

The major legislative wing renovation project dates back to 1977, when the Legislative Assembly authorized construction of the judicial wing/state office building. In recent years, various projects have been undertaken to continue the renovation of the legislative wing.

1995-96 Interim

During the 1995-96 interim, the Legislative Management Committee authorized purchase of bookcases for the Fort Union, Fort Totten, Peace Garden, and Prairie Rooms for storage of legislators' three-ring binders; and authorized installation of electrical and data wiring in the Harvest, Roughrider, Sakakawea, and House Conference Rooms for use of personal computers in those rooms. That committee also determined the local area network for legislators would be a wired network and

authorized installation of a recessed, popup grommet at each legislator's desk in the chambers.

1997-98 Interim

During the 1997-98 interim, the Legislative Management Committee authorized renovation of the front desk areas in both chambers. In both chambers, the renovation included lowering the front podium, providing an adjustable lectern at the front desk, building files on both sides of the front desk area against the wall, and providing for a removable ramp to provide wheelchair access from the rear floor area to the front well work area. In the Senate, the renovation included replacing the former page seating at the front desk with workspace for the desk force. In the House, the renovation included moving the Speaker's desk back approximately five feet, extending both ends of the middle desk to approximately five feet from the wall, adding a workspace area behind the desk force, lowering the front desk area by two steps for the employees and by two steps for the Speaker, eliminating the front row work desk, replacing the electrical wiring and installing additional conduits and ductwork under the House rostrum, and providing wiring jacks for television cameras on the Speaker's level and in the front well area.

The committee also approved replacing the carpet, velvet traffic control ropes, and the chairs in each chamber and recovering the benches and ceremonial chairs to match the new chairs.

1999-2000 Interim

Voting System

During the 1981-82 interim, Daktronics, Inc., Brookings, South Dakota, installed the electronic voting system in each chamber. A key feature was the computer interface with legislative information systems. During the 1989-90 interim, Daktronics replaced the two Superbrain computers used to operate the system with two IBM PS/2 Model 50Z computers, installed software upgrades, replaced the processor modules located behind the chambers, and upgraded the wall status displays (message boards) to allow up to six lines of display in the Senate and six to eight lines of display in the House.

Except for the number of voting stations and the capacity of the wall status displays in each chamber, the systems are identical. The House chamber has 108 voting stations and the Senate chamber has 54. Each of the two wall displays in each chamber consists of two units--the upper unit contains status displays and the lower unit contains members' names and vote indications.

The committee reviewed several suggestions to upgrade the voting system: (1) replace the IBM PS/2 Model 50Z computers with current models; (2) upgrade the operating system of these two computers to Windows 98 or Windows NT; (3) replace the dot matrix printers under the front desks with laser printers;

(4) move the voting system printers to the page rooms and rewrite the software so the vote can be sent electronically to the desk reporter; (5) replace the light-emitting diode displays, console buttons, vote indicator lights, and members' engraved nameplates at the front desks with touchscreen displays; (6) replace the wall displays of names and vote indications with tricolor panels; (7) replace the wiring to the members' desks and upgrade the members' consoles; and (8) provide for wiring and pre-positioned cameras that could focus on the member speaking as a result of the presiding officer recognizing that person through a touchscreen panel and could be used to broadcast video on the Internet. With the existing system, it was difficult to ensure repair parts for the aging components, renovation projects over the years have damaged the wiring, the computer operating system was outmoded, the current printers limited the ability to upgrade software to a client-server environment and the slow print speed slowed down floor procedures, and the consoles and displays did not provide the flexibility for more efficient loading, maintaining, and displaying of information.

The committee solicited bids to upgrade the voting system in each house. The base bid was to replace the computers with computers having a Windows 98 operating system and to replace and move the printers. Alternate bids were requested to replace the control consoles and displays at the front desks; replace the chamber wiring and members' voting stations; replace the wall name and vote indication displays; and provide for semiautomatic video coverage of the chambers (cameras would automatically focus on members recognized by the presiding officer). As appropriate, each bid and alternate required installation of software with appropriate connections, programming, and interfaces among the voting stations, voting system, and legislative information system software programs. This was especially important because the North Dakota Legislative Assembly information systems provide more continuous transfer of information on a "real-time" basis for use by legislators and legislative employees during a floor session than any information system used by any other state. Two firms submitted bids--Daktronics and International Roll-Call Corporation of Mechanicsville, Virginia--on the general specifications and alternates.

After reviewing the general specifications and alternates, the committee determined that the contract award should include replacing the computers and replacing and moving the printers, and replacing the control consoles and displays at the front desks, the chamber wiring and members' voting stations, and the wall name and vote indication displays. The Daktronics bid for these selections was \$764,540, and the International Roll-Call bid was \$338,940. The committee selected the bid of International Roll-Call after International Roll-Call provided assurance that the bid included the wiring, programming, and interfaces necessary among the voting stations, voting system, and legislative

information systems. Installation of the system in each chamber was completed this interim.

The International Roll-Call VS-720 voting system software was installed on IBM Model 300 GIs computers. Control of the voting system application is through Microtouch 15.1-inch flat panel screens using finger touch technology. Vote results are printed on Hewlett Packard Model 4050-N Laser Jet printers. Bill information is displayed on message panels in the House and Senate through the use of light-emitting diode technology that allows the information to be displayed in one of three colors--red, amber, or green. The names on the name display board change color to indicate votes--green for yea, red for nay, and amber for no vote.

The International Roll-Call voting system applications are 32-bit and are compiled using Microsoft Visual Basic 5.0. They are fully compatible with Windows 98, Windows NT 4.0, and Windows 2000 workstation operating systems. The core voting system product from International Roll-Call was enhanced by the requirements of the legislative information systems used by the Legislative Council and the Legislative Assembly. On their monitors, the presiding officer and the Secretary of the Senate or Chief Clerk of the House can recognize members to speak; view the information that is displayed on the message boards; view required vote totals, which are automatically calculated for different subjects as provided by the legislative rules; and view debate timers.

During installation, International Roll-Call proposed replacement of the four wall status displays with tricolor displays similar to the new displays for members' names. The committee authorized replacement of the display boards at a cost of \$104,000. The new boards have a display capacity of 16 lines and 40 characters per line. With the new message boards, fewer replacement parts are required onsite, the displays of the message boards and the name boards will be of colors of the same intensity and style, and greater flexibility is allowed for displaying information. As programmed for the 57th Legislative Assembly, the message board information includes bill number, sponsor, committee recommendation, motion under consideration, and vote total requirements. At the close of the vote, emergency clause status and vote totals and outcome are displayed. When a member is speaking, the member's name and district number are displayed (as recognized by the presiding officer through the officer's monitor). A debate timer (which is displayed on the presiding officer's monitor) can be displayed on these boards.

The committee also viewed different voting stations. One style would have extended across one-half the member's desk and included an electrical outlet and a network outlet in place of the popup grommets. The committee approved using the existing voting station boxes, but with a new faceplate, four new buttons (yea, nay, speak, and page), and a new telephone ring indicator light.

Audio System

The committee discussed recent failures of the audio system. The audio system was installed during the 1981-82 interim, but it is derived from 1960s technology. The current system is divided into four floor sections in each chamber as an efficient means of providing microphone availability to every member. If a microphone experiences a problem, however, it usually impacts the entire floor section. Late in the 1997-98 interim, the Legislative Management Committee received two proposals for replacing the audio system. One proposal would have replaced the amplifiers and associated hardware, provided touchscreen control panels, used the existing speaker system, and provided microphones at each desk at a cost of \$261,010 for both chambers. The other proposal emphasized placing a sound system module (containing a 2.5-inch speaker), microphone, microphone on/off switch, and loudspeaker volume control at each legislator's desk at a cost of \$250,000 for both chambers. That committee deferred action on either proposal until this interim.

During its review of the voting system and features of members' voting stations, the committee received updated proposals from the two firms that had submitted proposals in 1998. One firm revised its previous estimate from \$261,010 to \$156,100; and the other firm revised its previous estimate from \$250,000 to \$231,500.

At issue was the question of using the existing speakers or locating a small speaker at each member's desk, whether part of the voting station or in a separate console. To assure that any new sound system would be an improvement over the current system, the committee contracted with an acoustical engineering firm to review the chambers and make recommendations for any new sound system.

The committee received recommendations focusing on two areas in each chamber--architectural acoustics and an electronic sound system. With respect to architectural acoustics, recommendations included drilling holes in the wood paneling behind the rostrum in the House chamber (in order to minimize the formation of echoes) and modifying ceiling surfaces in the House chamber by placing acoustical panels or plaster on selected areas. With respect to the sound system, the primary recommendation was to place three speakers on the ceiling above the House front well area and two speakers on the ceiling above the Senate front well area. An alternate system was to use recessed speakers on either side of the rostrum and additional small loudspeakers mounted around the balcony in each chamber. The recommendations also included general design considerations of a recommended sound system, including loudspeakers, amplifiers, feedback control, audio distribution amplifiers, and power conditioners.

The committee determined that individual speakers at members' desks should not be the primary method of distributing audio in the chambers because of the effect one member's preferred high level of volume would have on nearby members; the impact of blocking the speaker

with materials, open notebook computers, or other items on a member's desk; and the need for additional speakers above and below the balcony. The committee also determined that a member should be able to control whether a microphone is on by a spring-loaded switch in the microphone handle, rather than a separate on/off switch at the member's desk or control by the presiding officer. The committee also determined that the presiding officer should have a small loudspeaker at the presiding officer's console to aid in hearing debate.

The committee solicited bids based on the general design recommendations of the acoustical engineering consultant. Alternate bids were requested for providing a microphone at each member's desk in the House chamber and at each member's desk in the Senate chamber. Four firms submitted bids, ranging from \$97,502 to \$130,300. The bids for additional microphones in the House chamber ranged from \$11,255 to \$15,500 and from \$20,770 to \$24,730 in the Senate chamber. The committee determined that microphones should be provided at every member's desk in the chambers, and selected the lowest total bid when the alternates are included—Ron's Electric, for a total bid of \$129,738.

Desk Renovation

The committee reviewed an estimate of \$62,000 for refinishing the legislators' desks in both chambers. The committee determined that repairs to smooth out the veneer, replace rough edges and worn spots, and repair or replace wood molding should be on a case-by-case basis rather than for the entire chamber because the existing voting stations and the popup grommets were being retained, and it would be difficult to obtain a veneer and finish having the quality of the current veneer and finish. The committee authorized the Legislative Council staff to arrange for repairs to legislators' desks and drawer faces as needed.

Telephone Room

The telephone room was designed at a time when telephone attendants converted all telephone messages to writing for delivery to legislators. Telephone attendants are located at carrels that provide a writing surface and space for a telephone. As more legislators started using the LAWS system to obtain information, telephone attendants started using mainframe terminals to transmit messages to legislators with computers. In 2001 telephone attendants will be using personal computers to access the LAWS system. Although mainframe terminals fit into the carrels (but left very little space to write messages for those legislators not using the LAWS system), personal computers would not fit into the carrels due to the built-in lighting fixtures in the carrels. The committee authorized the Legislative Council staff to arrange for renovation of the work areas of telephone attendants to allow space for a personal computer, telephone, and a writing surface.

Balcony Seats

The committee reviewed an estimate of \$31,000 to refinish and reupholster the 248 balcony seats in the House chamber. The committee took no action on this project.

Chamber Smoke Detection System

The committee reviewed two proposals for smoke detection systems in the Senate and House chambers. One included air sampling detectors on each ceiling and speaker/strobe light fire alarm units. The other included laser beam emitters rather than air sampling detectors. The air sampling system was described as being more accurate because air is constantly being sampled and monitored.

The committee approved the installation of a smoke detection system in the Senate and House chambers which uses air sampling and tubes and air inlet devices colored to match the ceiling colors.

Brynhild Haugland Room Chair Lift

During the legislative wing renovation project in 1981-82, a chair lift was installed on the stairs in the west entryway to the Brynhild Haugland Room as a means to make the room accessible to mobility-impaired individuals. In recent years the chair lift has begun to break down more frequently and is not as reliable as it once was. In addition, Facility Management has received complaints the lift makes so much noise during operation it interferes with meetings and draws special attention to individuals using the lift. Facility Management presented an estimate of \$15,950 to replace the chair lift.

The committee approved the replacement of the chair lift in the west entryway to the Brynhild Haugland Room.

SESSION ARRANGEMENTS

Reimbursement for Attending Council Meeting

As the result of a recommendation of the Legislative Management Committee in 1996, newly elected members of the Legislative Assembly were reimbursed expenses for attending the final Legislative Council meeting in November. This was viewed as a method of encouraging new members to meet with legislators and allowing caucuses to meet and to elect their leaders on the eve of the Legislative Council meeting in November. Although the caucuses have different policies regarding whether to continue with the early election procedure, the committee determined that it is important for new members to become acquainted with issues to be considered by the Legislative Assembly, and attendance at the Legislative Council meeting would be invaluable for acquiring this knowledge.

The committee recommends new members be reimbursed expenses for attending the final Legislative Council meeting in November. Three of the caucuses will make use of this opportunity for early election of leaders.

Legislators' Supplies

Stationery

The committee approved continuation of the policy that each legislator receive 500 sheets (one ream) of regular stationery and 500 envelopes; that the Speaker, each leader, and each assistant leader also receive 500 sheets of Monarch stationery (with 500 envelopes); and that the leaders receive as much regular stationery (and envelopes) as needed, and other legislators can request an additional ream of stationery and 500 envelopes. The committee approved use of laser print paper, similar to that used during the 1999 legislative session, for stationery due to its design for laser printers.

Letter Files

The committee approved continuation of the policy of providing a letter file to each legislator on request.

Capitol Access Key Cards

During the 1999 legislative session, a legislator could receive a photo identification card from the Office of Management and Budget to assist in properly identifying legislators who desire access to the Capitol after hours. Since October 1999, the Capitol has operated under a security key card system. Access to the Capitol on weekdays before 6:00 a.m. or after 6:00 p.m. or on weekends requires use of a credit-card-style key to present near a reader that unlocks the door and records use of the key. Each key card is coded, and a computerized record is kept of use.

The committee approved a policy that every legislator be given a security key card for access to the Capitol, that the leaders' cards be effective throughout the year, and that the cards of other members be effective during the legislative session.

Legislators' Expense Reimbursement Policy

Section 26 of Article XI of the Constitution of North Dakota provides that payment for necessary expenses of legislators may not exceed that allowed for other state employees. The 1985 Legislative Assembly authorized legislators to receive up to \$600 per month as reimbursement for lodging, and in 1997 this amount was increased to \$650 per month. The policy followed for the 56th Legislative Assembly was to allow these items as reimbursable lodging expenses during a legislative session: electricity and heat, water (including garbage collection and sewer charges), basic telephone service, telephone installation charges, rental of furniture and appliances, and transit charges for moving rental furniture and appliances. The committee recommends the legislative expense reimbursement policy for the 57th Legislative Assembly be the same as that followed for the 56th Legislative Assembly.

Legislators' Computer Training

The committee reviewed a proposed agenda for providing computer training to legislators before the

convening of the 57th Legislative Assembly. The training focuses on two areas--general computer training and LAWS training. New legislators are scheduled for one day (seven hours) of training in the use of personal computers. This training includes the signout of computers, review of the policies governing use of computers, and general introduction to the software packages on the computers. The training for new legislators would start December 4, the day before the organizational session convenes, and would continue on Friday after the organizational session adjourns.

During the organizational session, returning legislators could take one-hour, concurrent miniclasses on Notes e-mail, Internet, and Word Pro Millennium, similar to the miniclasses provided during the 1998 organizational session.

Legislators would receive LAWS system training in three-hour blocks, either in the morning or afternoon, on Friday, January 5, or Monday, January 8. This training would be provided in the Brynhild Haugland Room rather than in the chambers.

The committee approved the agenda and authorized the Legislative Council staff to conduct training sessions for legislators.

Legislators' Photographs

The committee approved the invitation to bid for Legislative Assembly photography services. With respect to the House, the proposal provided for two color pictures of two poses of 101 individuals; color touchup of the final pose; one composite color picture 50 by 60 inches, proofed, framed, and ready to hang; and 101 copies of the composite picture 11 by 14 inches in size. With respect to the Senate, the proposal provided for two color pictures of two poses of 53 individuals; color touchup of the final pose; one composite color picture 30 by 40 inches, proofed, framed, and ready to hang; and 53 copies of the composite picture 11 by 14 inches in size. The committee continued the option for oak frames for the small composite, available for purchase by individual legislators. The photographs of legislators are to be taken during the organizational session in 2000, and the photographs of the six elected legislative officers are to be taken during the first week of the regular session. A new provision is for the Legislative Council to provide the frames for the large composite pictures. This is intended to allow frames to be reused from assembly to assembly, which was suggested by the State Historical Society as a means to save storage space for composites of previous Legislative Assemblies which are in the state archives. Another new provision in the contract is for the photographer to provide the digital image of the pose selected by the photographer to the Legislative Council by December 22, 2000. The Legislative Council will use the digital image to update the legislative branch web site.

Requirements were also added in an effort to address concerns expressed by committee members

over the need to ensure a higher quality of portrait and composite. The invitation to bid included new requirements that the photographer must use a professional format camera with a portrait lens and that a bidder must submit four samples of business portraits that show the type of background, type of lighting, and type of image reflected by the bid. In addition, the sizes of the large composite pictures were changed to standard sizes that allow easier use of digital production technology. The invitation also declared the decision to accept a bid would depend on the quality of the bid, not necessarily the lowest bid price.

Two firms submitted bids ranging from \$3,200 to \$4,750. After reviewing the samples of business portraits submitted with the bids, the committee awarded the contract to the lowest bidder--Anderson Photography, Crosby--the firm that was also the photographer for the 54th, 55th, and 56th Legislative Assemblies.

Journal Distribution Policy

The committee recommends continuation of the policy followed in 1999 that the desk force inform legislators that a legislator may have daily journals sent to as many as three persons, but any additional sets require approval of that legislator's leader. Because journals are available on the legislative branch web page, legislators providing journals will be requested to ask the person to whom journals are to be sent whether that person has Internet access. The intent is to encourage those persons with Internet access to use that access, which reduces labor and postage costs.

Television Coverage

During the 1989 legislative session, Bismarck-Mandan Cable TV engineered and delivered a live and tape-delayed evening presentation of the North Dakota Senate. A camera was positioned on alternating sides of the gallery, and viewers were given the opportunity to observe the legislative process. During the 1991 and 1993 legislative sessions, Bismarck-Mandan Cable TV, through Community Access Television (a nonprofit corporation responsible for programming the public access channel of Bismarck-Mandan Cable TV), provided television coverage of the Senate and House of Representatives on alternating weeks. During the 1995 legislative session, Meredith Cable (formerly Bismarck-Mandan Cable TV) and Community Access Television provided similar coverage and also distributed nine copies of tapes of the floor sessions to the nine largest cities in the state for rebroadcast by local cable companies on the next day. During the 1997 and 1999 legislative sessions, Dakota Cable Communications (formerly Meredith Cable) and Community Access Television provided coverage of the Senate and House on alternating weeks. Because of funding limitations, no tapes were made for rebroadcast by local cable companies around the state. When the House met in morning

session and the Senate met in afternoon session, both sessions were televised.

During the committee's consideration of this coverage, Community Access Television indicated cable companies in the state's major cities expressed little interest in receiving tapes of floor sessions for delayed broadcast on their systems due to the up-to-the-date coverage provided by alternate news sources, e.g., broadcast and print media. In addition, funding might not be available to provide this coverage during the 2001 legislative session. The committee also received a request from the North Dakota Interactive Video Network for permission to combine the video signal from Community Access Television with the House and Senate audio feed and provide live video/audio streaming of the floor sessions on the Internet and the Interactive Video Network.

The committee authorized Community Access Television to continue to provide coverage of the 57th Legislative Assembly under an arrangement similar to that provided during the 1999 legislative session and authorized the project proposed by the North Dakota Interactive Video Network, provided any coverage would be at the expense of those parties.

Incoming WATS Line Service

During the 1985 and 1987 legislative sessions, four incoming WATS lines were provided for residents in the state to contact legislators or obtain information concerning legislative proposals. Beginning with the 1989 legislative session, six incoming WATS lines have been provided, as suggested by telephone service personnel.

Even if all telephone lines are in use, callers do not receive a "busy" signal. Before the 1999 legislative session, callers heard a message thanking them for calling the Legislative Assembly, describing the time the telephone service is available (8:00 a.m. to 5:00 p.m. Monday through Friday), and stating all lines were busy but their calls were important so please try again. Similar messages were in place for calls after hours and during the interim. During the 1997-98 interim, the Legislative Management Committee authorized a service whereby if all lines are busy or the call is made after regular business hours, a caller is given two options--one for staying on the line (if the call is during regular business hours) and one for leaving a message for legislators from the caller's district. This message feature was available 24 hours a day, 7 days a week. During the 1999 legislative session, 1,302 voice mail messages were left for legislators.

The committee recommends no change in the number of incoming WATS lines and continuation of the message option service. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

The committee authorized enhancement of the message service to include interactive voice response applications. One type of application would provide bill

status and committee hearing information after the caller would key the bill number. Another application is separation of the caller's information so it is easier for the caller to leave all the required information, e.g., rather than a single statement requesting the caller to provide name, address, telephone number, e-mail address, and message, a separate statement would ask for each item individually, with time to respond before the next request.

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 legislative session employment.

Session Employee Orientation and Training

The committee reviewed a proposed agenda for orientation and training of legislative session employees immediately before the convening of the 57th Legislative Assembly. The training is similar to that provided before the 1999 legislative session, with particular emphasis on providing training to the bill clerk as a backup for the assistant chief clerk of the House or assistant secretary of the Senate, the desk reporter, or the calendar clerk. The length of training depends on the extent an employee uses computers, and ranges from two hours (for the information desk attendants) to two weeks (for the desk reporters).

The committee approved the agenda and authorized the Legislative Council staff to conduct training sessions for various session employees.

The committee recommends that session employees be hired to begin work at various times before the convening of the Legislative Assembly, depending on the nature of an employee's duties and the training required of the employee. The starting dates range from November 27 to January 8, depending on the position.

Session Employee Positions

The committee reviewed the number of employee positions during the 1995, 1997, and 1999 legislative sessions, the impact computerization has had on both houses, the potential impact of increased use of technology in providing legislative information, and the impact resulting from creating a generic "legislative assistant" position in 1997 to allow easy transfer of an employee from one job function to another as necessary.

The committee reviewed a legislative session employee position plan that provided for two fewer positions in the Senate and two fewer positions in the House during the 2001 legislative session. For the Senate, the plan provided for a supply room coordinator (who is a Senate rather than House employee during the 2001 legislative session), no payroll clerk (who is a House rather than Senate employee during the 2001 legislative session), no telephone page, and no information desk attendant. For the House, the plan provided for a payroll

clerk, no supply room coordinator, no telephone page, and no parking lot attendant. The plan continued the rotation of two positions between the Senate and House--supply room coordinator and payroll clerk--and proposed adding two positions to the rotation--parking lot attendant (initially as a Senate employee) and information desk attendant (initially as a House employee). The plan also proposed redesignating the desk reporter as journal reporter because that employee is responsible for recording daily session activity in the journal, compiling the journal using the computerized journal reporting system, finalizing the journal, and preparing the journal for delivery to the printer.

The proposed plan included a chief telephone attendant and eight telephone attendants, as an alternative to contracting for telephone message service, as described under **Telephone Message Services (Telephone Room)**.

Based on compensation levels recommended by the committee for employees during the 2001 session the estimated savings in compensation resulting from the proposed reductions was \$18,265 (not including the positions reduced as the result of contracting for telephone message service, nor savings resulting from reduced workers' compensation and Social Security contributions). In total, the plan provided for 38 Senate employee positions and 44 House employee positions.

The rationale for proposing the reduction of one parking lot attendant position was that most legislators arrive and leave during the same time periods; signs at both ends of the parking lot clearly indicate the lot is reserved for legislators; during floor sessions and committee hearings little activity occurs in the parking lot; and Facility Management personnel maintain the lot.

The committee determined that one parking lot attendant position should be eliminated, with the understanding the position could be reinstated if it became clear that a second position is needed to provide assistance to some legislators and to provide continuous parking lot supervision.

The rationale for proposing the reduction of one information desk attendant was related to the recent enhancements to the telephone message service. Because of a reduced number of calls to the telephone room during recent sessions, very few calls for legislative information are routed to the information desk. In addition, the options allowing voice mail messages and providing interactive voice response bill status and committee hearing information should further reduce any routing of calls for legislative information to the information desk from the telephone message service. As a result, the primary duties of an attendant are showing people how to use the personal computer provided for members of the public to obtain bill status information, answering general questions, and providing directions to specific rooms or areas.

Because the House "lost" its turn to employ the chief telephone attendant as the result of contracting with a third party to operate the telephone room, the parking lot

attendant position was approved as a position that alternates between the House and the Senate, starting with the House in 2001. The remaining information desk attendant position also will alternate between the Senate and the House, starting with the Senate in 2001.

The committee recommends that the Employment Committees provide for 34 Senate employee positions and 39 House employee positions which takes into account the reduction of positions because of contracting for telephone message services. The committee also recommends redesignating the desk reporter as the journal reporter.

New enhancements to the calendar and journal system will result in complete automation of the bill status system, and thus the bill clerk will have little responsibility other than numbering and recording bills when they are introduced. The committee determined the position should not be eliminated or consolidated into other desk force positions, but should be used as a backup position to absent desk force personnel. As a result, the bill control clerk will receive computer training in the journal system (to back up the desk reporter), the message system (to back up the assistant chief clerk and assistant secretary of the Senate), and the calendar system (to back up the calendar clerk). After experience with the enhanced systems during a legislative session, a determination can be made whether adequate workload exists for the number of positions at the front desk and whether adequate backup is provided in case an employee is absent.

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 1999 legislative session. In 1999 a general increase of seven percent was provided as well as a skills recognition adjustment ranging from an additional \$1 to \$11 per day for certain legislative session employees in recognition of supervisory, technical, and communication skills.

The committee recommends a general increase of five percent, rounded to the nearest dollar, for all positions. This was primarily in recognition of the average pay increases of two percent and three percent approved by the 56th Legislative Assembly for state employees. The committee also recommends a skills recognition adjustment ranging from an additional \$2 to \$11 per day for certain legislative session employees in recognition of increased technical ability requirements of their positions as well as increased responsibility for accuracy of legislative session information. As a result of these recommendations, compensation would range from \$65 to \$109 per day (\$8.13 to \$13.63 per hour based on a 40-hour workweek). The committee also recommends continuation of the authorization for employees to receive an additional \$1 per day for each previous regular session employed, up to an additional \$10 per day.

North Dakota Century Code Section 54-03-10 requires the compensation of Legislative Assembly employees to be set by concurrent resolution. The committee recommends that the concurrent resolution establishing employee positions continue the practice of not including specific names or identify specific individuals. This type of resolution was first adopted in 1997 as a means to avoid special action to hire an employee after adoption of the resolution. By designating positions, rather than naming employees, an employment committee report that names an employee is sufficient to identify that employee, the position, and the compensation level. The committee also recommends that the concurrent resolution refer to the generic position of "legislative assistant" in place of employees formerly classified as assistant sergeant-at-arms, supply room coordinator, desk page, page and bill book clerk, information desk attendant, and parking lot attendant; continue to include provisions authorizing conversion of full-time positions to part-time positions; and continue to authorize the leaders to consolidate staff assistant positions.

Bill and Journal Room Services

The committee determined that the combined contract for printing bills and resolutions, for printing daily journals, and for providing bill and journal room services should be continued for the 57th Legislative Assembly. The specifics relating to printing bills, resolutions, and journals are described under **CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS, Contract Contents**. This combination contract was first entered for the 55th Legislative Assembly. For the 56th Legislative Assembly, bill and journal room services were provided by the contractor at a total cost of \$38,840.

Under the combined contract, the contractor is required to provide a basic level of service similar to that provided during the 1999 legislative session.

The basic level of service is for at least one person to organize and operate the bill and journal room Monday through Friday from December 11, 2000, through January 8, 2001, excluding Christmas Day and New Year's Day; for the bill and journal room to be open between 7:00 a.m. and 5:30 p.m. on days either house is in session; for at least one person to be in the bill and journal room anytime either house is in session after 5:30 p.m.; and for distribution of documents as soon as possible, according to a schedule in the contract. The contract also requires the contractor to provide photocopy and facsimile (fax) services to third parties, upon payment of a fee set by the contractor and retained by the contractor.

Beginning in 1999, the bill and journal room provided photocopies of engrossed bills and resolutions upon payment of a copying fee. A number of responses to the legislative process questionnaire commented on charging legislators who received copies of engrossed

measures from the bill and journal room. Although the LAWS system and the bill status system available through the Internet provide engrossed versions of bills and resolutions and the Legislative Council office provides copies of engrossed measures without charge to anyone who requests a copy, the committee discussed various options for making printed copies of engrossed bills and resolutions available to legislators and others. The committee determined that legislators should have ready access to printed copies in two instances. As reported under **Committee Clerks**, the committee approved revision of the committee clerk job description to require the committee clerk to provide copies to committee members and the prime sponsor.

With respect to operation of the bill and journal room, the committee determined the Legislative Council should provide copies of engrossed bills and resolutions to the contractor for distribution to legislators and entities that subscribe to receive copies of engrossed measures. The committee also included a provision in the contract to require the contractor to provide a copy of an engrossed bill or resolution without charge to a legislator who personally requests a copy at the walkup window of the bill and journal room. The contractor would continue to provide copies of engrossed bills and resolutions to others upon payment of a charge set by the contractor. The committee also included a provision that the bill and journal room would be open during any extended recess for the one day after adjournment and the one day before the Legislative Assembly reconvenes.

As reported under **CONTRACTS FOR PRINTING LEGISLATIVE DOCUMENTS**, the committee accepted the bid by Quality Printing Service, Bismarck, for operating the bill and journal room and printing bills, resolutions, and journals during the 2001 legislative session. The bid for operating the bill and journal room was \$510 per day for 88 days--19 days before the Legislative Assembly convenes (beginning December 11, 2000), an estimated 67 legislative days, and two business days during the February recess--and \$440 per day for each additional day of service beyond 67 legislative days.

Secretarial Services

The Legislative Assembly privatized secretarial services in 1995 rather than continuing to operate a joint secretarial pool. During the 1993 legislative session, the Senate and House employed the equivalent of 10.5 stenographers and typists at a cost of \$56,629.20, not including the cost of the two chief stenographers and payroll clerks (\$14,326.59). During the 1995 legislative session, Jan's Secretarial Service provided nine secretaries and a supervisor for a total cost of \$46,053.50. During the 1997 legislative session, A.S.A.P. Secretarial Service provided seven employees and one supervisor for a total cost of \$41,462.50. During the 1999 legislative session, Interim Personnel provided four employees, with four employees on call as needed, for a total cost of \$32,564.47.

The committee reviewed the secretarial services provided by Interim Personnel during the 1999 legislative session. Interim Personnel recommended reducing the core employee level to four, and reported on the number of transcripts of committee hearings requested by legislators as well as the volume of mail merges, i.e., a base document is individually addressed to every name on a list of addresses.

The committee recommends continuation of secretarial services to the Legislative Assembly on a private contract basis. The committee authorized the Legislative Council staff to prepare specifications that included the suggested base level of service of four core employees, and to solicit bids for secretarial services on a per day basis for 70 legislative days for the 57th Legislative Assembly.

The committee received two bids for providing secretarial services. Spherion (formerly Interim Personnel), Bismarck, bid \$333.20 per day and Expressway Personnel, Bismarck, bid \$427.50 per day. The committee's recommendation is described under **Telephone Message Services (Telephone Room)**.

To ensure proper use of secretarial services, the committee reviewed the *Policy Regarding Secretarial Services to Legislators* approved by the Legislative Council in November 1996. The policy points out that secretarial service employees are not legislative employees, describes secretarial services as being available between 7:30 a.m. and 5:30 p.m., provides for 24-hour turnaround of most projects, and provides the procedure for any comment or complaint regarding the service. The policy is included in the legislators' information packets distributed during the organizational session.

The committee recommends amendment of the policy to limit requests for transcripts of committee hearing tapes to the Majority Leader, as requested by the committee chairman when the committee clerk is unable to prepare minutes due to illness, disability, or absence. This recommendation is based on the rationale that transcripts are appropriate only to help alleviate the workload of a committee clerk in limited instances. The committee also recommends amendment of the policy to limit merge requests to 25 individual addresses unless otherwise approved by the Majority Leader or Minority Leader, as appropriate. The rationale for this limitation is to provide a guide for members in making reasonable use of secretarial services, but allow flexibility by placing the responsibility for determining what is reasonable in a particular situation on the appropriate leader. To ensure the appropriate leader is informed of requests in violation of these restrictions, the specifications for the secretarial service contract include a provision that the supervisor is to inform the appropriate leader of a request for a restricted work project in violation of the policy.

Telephone Message Services (Telephone Room)

The committee reviewed the operation of the telephone room. During the 1999 legislative session, the Legislative Assembly employed a chief telephone attendant, eight telephone attendants, and two telephone pages. The total salary and Social Security cost for these 11 employees was \$57,169.69.

Of particular interest was the fact that the number of telephone calls using the incoming WATS lines has gone down every legislative session since 1993. During the 1993 legislative session, 62,320 calls were received, and during the 1999 legislative session, 22,491 calls were received. The 1999 figure includes 1,302 voice mail messages (which for the first time, could be left at any time outside regular business hours). Although the reasons for the declining number of calls are unclear, factors may include the provision of a telephone to every legislator in 1997, the provision of notebook-style personal computers to 75 legislators in 1997 (which expanded to 132 legislators in 1999) with the resulting use of e-mail to send messages to those legislators, and the availability of bill status information on the legislative branch web site.

Because of this reduction in telephone room workload, the committee determined that a more appropriate level of staffing would be nine telephone attendants, with one attendant designated as the supervisor or chief attendant. The work formerly done by telephone pages--delivering telephone messages to those legislators without notebook computers and sorting and delivering faxes received by the Legislative Assembly--could be assigned to the telephone attendants on a rotating or other basis.

The committee reviewed its efforts at contracting with private parties and determined that telephone message services could be provided on a private contract basis. The committee authorized the Legislative Council staff to prepare specifications that included the suggested base level of service of nine telephone attendants, with one of the attendants designated as the onsite supervisor, and solicit bids for telephone message services on a per day basis for 70 legislative days for the 57th Legislative Assembly.

The committee received two bids for providing telephone message services. Expressway Personnel bid \$647.36 per day and Spherion bid \$711.20 per day.

The committee discussed whether its recommendation should be the lowest bid for secretarial services and the lowest bid for telephone message services or the lowest bid when both bids are combined. The discussion included whether a combined service, provided by one firm, could result in additional savings if the contractor scheduled employees as needed in either the telephone room or the secretarial service room, or whether two firms, each providing services, would provide the opportunity for legislators to compare their services so any additional employees needed in other

work assignments could be obtained from the preferred contractor.

The committee recommends accepting the lowest combined bid, which was submitted by Spherion, Bismarck, for providing secretarial services and telephone message services during the 2001 legislative session.

Committee Clerks

A number of responses to the legislative process questionnaire asked why legislators were charged for receiving copies of engrossed bills and resolutions from the bill and journal room. During the committee discussion of these comments, it appeared that many of the requests by legislators for printed copies of an engrossed measure were for the purpose of distributing those copies to members of the committee that was conducting the hearing on the measure, as engrossed. The committee discovered that some committee chairmen require their committee clerks to obtain copies of engrossed bills and resolutions and place those copies in the committee bill books prepared for committee members, while other chairmen do not. Although engrossed versions of bills and resolutions are available online from the LAWS system and the bill status system and printed versions of engrossed bills and resolutions are available from the Legislative Council office, the committee determined that committee hearings and discussion would be enhanced if all members of the committee had a printed copy of engrossed measures under discussion.

The committee approved revision of the committee clerk job description to provide for the committee clerk to obtain from the Legislative Council a copy of an engrossed bill and resolution being heard by the clerk's committee, make the requisite number of copies, and insert the copies in the committee members' bill books and provide a copy to the prime sponsor. Under this requirement, all committees will be handling the engrossed bill and resolution distribution in a uniform manner. This also should reduce the need for legislators to obtain multiple copies of engrossed measures from the bill and journal room for committee hearing purposes.

The committee also approved revisions to the committee clerk job description which reflect the committee's recommended amendments to Senate and House Rules 404 and the committee's recommendation to reduce the number of colors of various bill and resolution covers from 12 to 4, as described under **LEGISLATIVE RULES, Copies of Bills and Resolutions**. The committee also approved revision of the committee clerk job description to replace the "Background" material that focused on introduction of bills, with material that focused on the overall legislative process and the committee clerk's part in that process.

Legislative Internship Program

Since 1969 the Legislative Assembly has sponsored a legislative internship program in cooperation with the School of Law and graduate school at the University of North Dakota and the graduate school at North Dakota State University. The program has provided the Legislative Assembly with the assistance of law school students and graduate school students for a variety of tasks, especially the preparation of amendments, and has provided the students with a valuable educational experience.

The committee approved continuation of the program for the 57th Legislative Assembly at the same number as authorized in 1999 (12--8 from the School of Law, 2 from the graduate program at the University of North Dakota, and 2 from the graduate program at North Dakota State University), with 10 interns assigned to committees and 2 assigned to the Legislative Council office.

The committee increased the stipend received by an intern from \$5,075 to \$5,250 (\$1,500 per month) for the 3.5-month program.

Legislative Tour Guide Program

For the past 12 legislative sessions, the Legislative Council has operated a tour guide program that has coordinated tours of the Legislative Assembly by high school groups. The tour guide program is extensively used by high school groups during the legislative session, and other groups have been placed on the tour schedule at their request. Since 1987 two tour guides have been hired each session due to the heavy workload in scheduling tour groups. The committee approved the continuation of the tour guide program for the 2001 legislative session.

Doctor of the Day Program

The committee accepted an offer by the North Dakota Medical Association to continue the doctor of the day program during the 2001 legislative session. The committee also authorized the North Dakota Medical Association to proceed with installing a newer examination table, privacy curtain, desk, and locking medication cabinet in the medical services room.

Chaplaincy Program

The Bismarck and Mandan ministerial associations have coordinated the scheduling of a chaplain in each house to open the daily session with a prayer. Each chaplain receives a daily stipend of \$25. Three associations alternate as coordinator of the program. The Bismarck-Mandan Evangelical Ministerial Fellowship coordinated the program during the 1999 legislative session.

The committee reviewed the procedure in effect since 1985 which gives legislators until the end of December to schedule out-of-town clergy to deliver prayers during the legislative session. The committee authorized the Legislative Council staff to notify all legislators before the

convening of the session that they have until December 31, 2000, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective house during the 2001 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2000 organizational session. Although based on the agenda for the 1998 organizational session, three major changes were made. The time set aside for caucuses on Tuesday morning was eliminated because the caucuses meet and select leadership before the organizational session convenes. Basically, the time formerly available for caucuses became available for legislators to schedule sessions with the photographer. The presentations on the branches of government and Legislative Council services were moved from Tuesday afternoon to Tuesday morning, the presentations on legislative rules and procedures were moved from Wednesday morning to Tuesday afternoon, the presentations on use of legislative documents were moved from Wednesday afternoon to Wednesday morning and presentations on affiliated organizations were scheduled for Wednesday afternoon. The training sessions for legislators who have been assigned personal computers were revamped so training on e-mail, Internet, and word processing software replaced training on use of the LAWS system. As described under **SESSION ARRANGEMENTS, Legislators' Computer Training**, LAWS system training will be provided on Friday, January 5, 2000, and Monday, January 8, 2001, the day before the 57th Legislative Assembly convenes in regular session.

State of the State Address

During the 1999 legislative session, the House and Senate convened in joint session at 1:15 p.m. on the first legislative day. Five escort committees were appointed to escort various officials, former officials, and spouses into the chamber--one for the Lieutenant Governor and her spouse, one for the Chief Justice, one for former governors and their spouses, one for former chief justices and their spouses, and one for the Governor and his spouse. The joint session was called to order at 1:30 p.m. and the Governor presented his state of the state address.

The committee authorized the Legislative Council staff to contact the Governor for presentation of the state of the state address on the first legislative day of the 2001 legislative 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 to a joint session on the second legislative day of the 2001 legislative session.

Tribal-State Relationship Message

During the 1983-84, 1985-86, and 1987-88 interims, representatives of the Indian tribes in North Dakota requested permission to appear before the Legislative Assembly to describe their perspective of the status of the relationship between the tribes and the state of North Dakota. As a result of invitations extended by the Legislative Procedure and Arrangements and the Legislative Management Committees, a spokesman from the tribes addressed each house of the Legislative Assembly during the first week of the 1985-99 legislative sessions.

The committee authorized the Legislative Council staff to extend an invitation to representatives of the Indian tribes to make a presentation to each house of the 2001 Legislative Assembly on the third legislative day.

Legislative Compensation Commission Report

The committee requested that the report of the Legislative Compensation Commission be a written report submitted to the presiding officer of each house. The practice of submitting a written report rather than an oral report was started in 1993.

Agricultural Commodity Promotion Groups Report

The committee reviewed NDCC Section 4-24-10 and its requirement that 12 agricultural commodity promotion groups file a uniform report at a public hearing before the standing Agriculture Committee of each house. The report must be filed between the 1st and 10th legislative day of the regular legislative session. The committee designated the second legislative day the Agriculture Committees meet as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

North Dakota Close Up Day

The committee approved a request from the North Dakota Council on Educational Leaders to designate Monday, February 12, 2001, as the day for legislators to meet with Close Up program participants. This program will bring high school students from around the state to the Capitol for various programs but focusing on actions to make the state attractive to graduating students. Time will be set aside during the early evening of February 12 for legislators to meet with students from legislators' districts.

LEGISLATIVE REDISTRICTING STUDY

The study directed by Senate Concurrent Resolution No. 4005 concerned the state of the law and technology with respect to legislative redistricting.

Census 2000 Redistricting Data Program

During the 1995-96 interim, the Legislative Management Committee approved participation in Phase 1 of the Census 2000 Redistricting Data Program which provided for identifying geographic areas for specific

tabulations of population during the 2000 census. During the 1997-98 interim, the committee approved participation in Phase 2 of the program which required placement of legislative district boundaries on maps of the entire state. As a result, the Census Bureau received legislative district maps and will provide 2000 census demographic information on adults in those districts. The rationale for participating in Phase 2 of the program was to receive information that can be used as a starting point in determining the extent of redistricting needed after the 2000 census.

During the interim, the Census Bureau requested verification of the maps. Verification was completed this interim.

Legislative Redistricting Software

During the 1981 and 1991 legislative redistricting processes, the Legislative Council contracted with a consultant to provide computer-assisted redistricting services. Several software vendors now offer redistricting software suitable for use on personal computers. The committee reviewed information on software programs distributed by seven vendors and on activities in other states regarding selection of redistricting software. The committee focused on software that had been selected by South Dakota--autoBound by Digital Engineering Corporation--and software selected by Minnesota--Maptitude for Redistricting by Caliper Corporation. Information provided to the committee indicated that South Dakota chose autoBound because that software appeared to be well suited for redistricting in that state, and Minnesota chose Maptitude for Redistricting because of a preference for that software's mapping capabilities. Although not dispositive of the issue for North Dakota, software using the ArcView desktop geographic information system (the base software used to create maps) is used by 85 percent of state and local governments, including other North Dakota state agencies.

After a demonstration of autoBound by Digital Engineering Corporation, the committee approved the use of autoBound for legislative redistricting purposes of the Legislative Assembly. Reasons for acquiring this software include its use of ArcView, its apparent ease of use by users with different levels of expertise, and its apparent suitability for use in a rural state. The main reason this software was acquired before actual redistricting activities begin is to provide enough lead time to become proficient in its use before release of the 2000 census information. The software allows use of 1990 census information as well as recent census estimates. The number of licenses eventually obtained will depend on the decision as to the extent of distribution of the software once redistricting activities start.

State of the Law on Legislative Redistricting North Dakota Law

Section 1 of Article IV of the Constitution of North Dakota provides “[t]he 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 of the Constitution 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, that section provides that the districts ascertained after the 1990 federal decennial 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.” In addition, one senator and at least two representatives must be apportioned to each senatorial district. 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. Elections may be at large or from subdistricts.

Section 3 of Article IV of the Constitution requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

In addition to the constitutional requirements, NDCC 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. That section also provides that the apportionment plan 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.

North Dakota Century Code Section 54-03-01.8 provides for the staggering of Senate terms--senators from even-numbered districts were elected in 1992 for a term of four years, and senators from odd-numbered districts were elected in 1994 for a term of four years. Section 54-03-01.10 provides for the staggering of terms of representatives, to coincide with the terms of senators.

Special statutory provisions for timetables for special elections, reorganization of political parties, and establishment of voting precincts are in NDCC Sections 16.1-01-02.2, 16.1-03-17, and 16.1-04-03.

Federal Case Law

The committee reviewed information on recent federal court decisions concerning legislative redistricting. Basically, federal courts will provide relief in

legislative redistricting cases of federal constitutional violations. With respect to population equality, the overall range generally allowed for a redistricting plan is 10 percent. With respect to partisan gerrymandering, the issue is justiciable but proving unconstitutional discrimination appears to be very difficult. With respect to multimember districts, such districts are not unconstitutional per se but the United States Supreme Court prefers single-member districts for court-fashioned plans and multimember plans are subject to challenges under Section 2 of the Voting Right Act. With respect to racial gerrymandering, a plan may be held to be unconstitutional if race is a primary consideration in creating districts.

Proposed Study - Recommended Resolution

The committee recommends House Concurrent Resolution No. 3003 directing the Legislative Council to study and develop a legislative redistricting plan or plans for use in the 2002 primary election. This resolution is similar to the resolution directing the 1991-92 interim study, which recommended the legislative redistricting plan adopted by the Legislative Assembly in special session November 4-8, 1991.

LEGISLATIVE ETHICS COMMITTEE

North Dakota Century Code Section 54-35-02.8 requires the Legislative Council to appoint an ethics committee to consider or prepare a legislative code of ethics. Since 1995 the Legislative Council has appointed the Legislative Management Committee as the Legislative Ethics Committee.

During the 1995-96 interim, the Legislative Management Committee reviewed North Dakota laws affecting legislative ethics. That committee also recommended legislative rules declaring a legislative ethics policy, urging members to maintain ethical standards and recognize the importance of standards contained in the rules, urging members to apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, and requiring the Legislative Council to conduct classes on legislative ethics and laws governing the activities and conduct of public officials. The Legislative Council is to conduct the classes during the organizational session and at other times as deemed appropriate. The Legislative Assembly has adopted those rules as Joint Rules 1001 through 1004.

The committee makes no recommendation regarding changes to the legislative code of ethics.

MISCELLANEOUS MATTERS

Meeting With Legislative Compensation Commission

The committee met with members of the Legislative Compensation Commission to discuss recommendations relating to legislative compensation. The commission is recommending proposed legislation to increase

legislators' session compensation from \$111 per calendar day to \$125 per calendar day during legislative sessions; to increase legislators' interim per diem from \$75 to \$100; and to increase the state mileage reimbursement rate from 25 to 31 cents a mile.

North Dakota Century Code Publication

As a result of inquiries by West Group (a publisher of state statutes) concerning publication of the North Dakota Century Code, the committee reviewed the arrangement with LEXIS Law Publishing for publication of the North Dakota Century Code. In 1959 the state contracted with The Allen Smith Company to publish the North Dakota Century Code. Since then, The Allen Smith Company was acquired by The Michie Company (now LEXIS Law Publishing); the state contracted with LEXIS Law Publishing in 1991 for electronic use of the Century Code; and the state contracted with LEXIS Law Publishing in 1994 to publish the code in CD-ROM format.

The North Dakota Century Code is an annotated code. It contains source notes after each section, and legal textbook and law review references, collateral references, and summaries of North Dakota Supreme Court opinions after relevant sections. In 1999 the price for a set of the North Dakota Century Code was \$450 and the annual cost of pocket supplements, index, and replacement volumes was \$160.50.

The committee received information summarizing the activities of LEXIS Law Publishing and West Group in

the states. LEXIS Law Publishing publishes annotated codes in 31 states. In 1999 the average price for annotated codes published by LEXIS Law Publishing was \$865.12 and the average annual cost of upkeep was \$375.55. West Group publishes annotated codes in 26 states. In 1998 the average price for annotated codes published by West Group was \$1,846.44 and the average annual cost of upkeep was \$574.56.

At issue with respect to the feasibility of opening the Century Code publication process to competitive bidding is ownership of the copyright to the materials in the volumes. Also of concern is the relationship between the Legislative Council, which converts bill text to statute text and determines editorial corrections such as conflict resolution and code placement in the legislative information systems, and any new publisher, which must have compatible publishing software and publishing procedures.

The committee requested the Legislative Council staff to begin the process of preparing a request for proposals for publication of the North Dakota Century Code. The committee recognized that this process would extend through the next biennium due to the substantial amount of time required to prepare specifications containing all items necessary for a code product in North Dakota, the countervailing constraints on available time due to the upcoming legislative session, and the current arrangements for publication of the 2001 pocket supplements and replacement volumes.

REGULATORY REFORM REVIEW COMMISSION

The Regulatory Reform Review Commission is established by North Dakota Century Code (NDCC) Section 49-21-22.2. The commission is to review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1999 and 2003 legislative sessions. Also, the commission may review the effects of federal universal support mechanisms on telecommunications companies and consumers in this state as well as the preservation and advancement of universal service in this state.

Under NDCC Section 49-21-22.2, the commission consists of one member of the Public Service Commission who has responsibility for telecommunications regulation, two members of the Senate appointed by the President of the Senate, and two members of the House of Representatives appointed by the Speaker of the House. Commission members were Representatives Mick Grosz (Chairman) and Eliot Glassheim, and Senators Vern Thompson and Rich Wardner, and Public Service Commissioner Bruce Hagen.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

NORTH DAKOTA TELECOMMUNICATIONS LAW

Before 1983 telecommunications companies in North Dakota were regulated by the Public Service Commission as traditional public utilities. In 1983 cooperatives and small telephone companies were removed from the ratemaking jurisdiction of the Public Service Commission. In 1985 the Legislative Assembly revised this exemption to remove local service of cooperatives and small companies from the Public Service Commission's ratemaking jurisdiction. In 1985 the Public Service Commission was given authority to deregulate telecommunications services. The Public Service Commission was required to find that the service, company, or transaction was of limited scope or was subject to effective competition to be deregulated. This authority was removed in 1999 by Senate Bill No. 2420.

There have been several amendments to the telecommunications law since 1989, when major deregulation of the telecommunications industry began.

1989 Senate Bill No. 2320

The Regulatory Reform Review Commission was created in 1989 to review the deregulation of the telecommunications industry resulting from enactment of 1989 Senate Bill No. 2320. The commission originally consisted of the three Public Service Commissioners, two members of the Senate, and two members of the House of Representatives.

Senate Bill No. 2320 exempted telecommunications companies and services from rate or rate-of-return regulation by the Public Service Commission unless a telecommunications company notified the Public Service Commission that it wanted to be regulated in this manner. For telecommunications companies with over 50,000 end users, the election not to be exempt from rate or rate-of-return regulation was a one-time, irrevocable decision. Although the Legislative Assembly exempted essential telecommunications service and nonessential telecommunications service (service that is not included within the definition of essential telecommunications service) from rate or rate-of-return regulation by the Public Service Commission, essential telecommunications service is still subject to a price cap based upon the essential telecommunications price factor. Essential telecommunications service includes service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area.

1989-90 Interim and 52nd Legislative Assembly

During the 1989-90 interim, the commission reviewed the Public Service Commission's determination of the essential telecommunications price factor, Minnesota's incentive regulations, and recommendations of interested parties. Even though the commission did not recommend any legislation, the 52nd Legislative Assembly enacted three bills that primarily affected NDCC Title 49 (no changes were made to the substantive provisions of 1989 Senate Bill No. 2320).

1991 House Bill No. 1095

This bill required a person who makes telephones available to the public for intrastate telephone calls on that person's premises to ensure that the telephones allow the consumer to use access code numbers ("800," "950," or "10XXX 0+") to obtain access to the provider of operator services desired by the consumer at a charge no greater than that charged for calls placed using the presubscribed provider of operator services.

1991 House Bill No. 1556

This bill required telecommunications companies and rural telephone cooperatives offering telephone call identification services to allow a caller to withhold display of the caller's telephone number from the person receiving the telephone call placed by the caller.

1991 House Bill No. 1557

This bill required mutual aid telecommunications cooperatives and telecommunications cooperative associations to have the approval of two-thirds of the membership of the cooperative or association to sell a physical plant if the value of the plant is more than

five percent of the value of the cooperative or association. In addition, the enabling statute for the commission was amended to transfer responsibility for providing staff services for the commission from the Legislative Council to the Public Service Commission.

1991-92 Interim and 53rd Legislative Assembly

The study of telecommunications law by the commission during the 1991-92 interim resulted in two main recommendations incorporated into 1993 Senate Bill No. 2440. The first related to the banking of essential telecommunications price factor changes and the second related to uniform long-distance rates. These recommendations came after the commission reviewed the Public Service Commission's determination of the essential telecommunications price factor and the Public Service Commission's decision that ordered equal access (intraLATA) and unbundling for the purpose of offering service on an equal and open nondiscriminatory basis. The 53rd Legislative Assembly enacted four bills that primarily affected NDCC Title 49.

1993 Senate Bill No. 2317

This bill exempted a public utility operated as a nonprofit, cooperative, or mutual telecommunications company or a telecommunications company having fewer than 3,000 local exchange subscribers from regulation under NDCC Chapters 49-02 and 49-21. However, these public utilities were still subject to Sections 49-02-02(7), 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-06, 49-21-07, 49-21-08, 49-21-09, and 49-21-10 regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies.

1993 Senate Bill No. 2385

This bill, effective through July 31, 1999, provided that dialing parity on an intraLATA basis, otherwise known as 1+ intraLATA equal access, may not be required to be provided by any company providing local exchange service. This bill reversed a Public Service Commission ruling that forced U S West (now known as Qwest) to open its "short-haul" long-distance markets to other telephone companies.

1993 Senate Bill No. 2393

This bill reduced to one the number of Public Service Commissioners on the commission and required the Legislative Council to provide staff services rather than the Public Service Commission.

1993 Senate Bill No. 2440

This bill changed the definition of "essential telecommunications price factor" for purposes of telecommunications regulation from the annual change in a company's input cost index reduced by 50 percent of that

company's productivity incentive adjustment to a factor determined annually which is the lower of 41.6667 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.75 percentage points for group I telecommunications companies or a factor determined annually which is the lower of 52.0834 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.0625 percentage points for group II telecommunications companies. Group I telecommunications companies are those companies with over 50,000 subscribers, and group II telecommunications companies are companies with 50,000 or fewer subscribers. The bill also revised the distinction between essential telecommunications services that are regulated or subject to the essential telecommunications price factor cap and nonessential services that are not subject to the essential telecommunications price factor cap. The bill also revised the definition of telecommunications services that are not subject to the telecommunications deregulation law, such as coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment, inside wire and premise cable installation and maintenance, and directory services that are not essential, such as "yellow pages" advertising and boldface or color listings in "white pages."

1993-94 Interim and 54th Legislative Assembly

The study of telecommunications law by the commission during the 1993-94 interim resulted in the recommendation of Senate Bill Nos. 2078 and 2079. The commission made these recommendations after reviewing federal legislation and the North Dakota Supreme Court decision *MCI Telecommunications Corp. v. Heitkamp*, 523 N.W.2d 548 (1994). This case related to a challenge of 1993 Senate Bill No. 2385, which provided that dialing parity on an intraLATA basis may not be required to be provided by any company providing local exchange service. The statute withstood challenge on special law and unlawful delegation of legislative authority grounds. The 54th Legislative Assembly enacted five bills relating to telecommunications law.

1995 Senate Bill No. 2008

This bill deleted the requirement that the Public Service Commission consider proposed rates and proposed design in determining whether to grant a certificate of public convenience and necessity and provided that the Public Service Commission must consider the technical, financial, and managerial ability of an applicant for the certificate.

1995 Senate Bill No. 2078

This bill included pay phones within regulation for the purpose of requiring access code numbers to the operator services desired by the consumer.

1995 Senate Bill No. 2079

This bill reestablished the commission until 1999.

1995 House Bill No. 1274

This bill required telecommunications companies to allow callers on a per line basis to withhold display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller. The bill required telecommunications companies to provide this option without charge on a per call basis and without charge on a per line basis to residential customers and business customers with special needs.

1995 House Bill No. 1459

This bill increased the size of a telecommunications company not subject to regulation by the Public Service Commission from a company having fewer than 3,000 local exchange subscribers to a company having fewer than 8,000 local exchange subscribers. As a result of this bill, only the three largest telephone companies in this state were subject to price regulation.

1995-96 Interim and 55th Legislative Assembly

The study of telecommunications law by the commission during the 1995-96 interim resulted in the recommendation of 1997 House Bill No. 1067. The commission made this recommendation after reviewing the federal Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 5] and meeting with the Taxation Committee and reviewing the effect of taxation laws on North Dakota telecommunications law. The Act was the first major change to the federal telecommunications law since 1934 (the major change provided by the Act is the opening of local exchange markets to competition). House Bill No. 1067, which failed to pass, was meant to implement the federal Telecommunications Act of 1996. A portion of the bill would have created a state universal service fund. The 55th Legislative Assembly did not enact any bill that primarily affected telecommunications law found in NDCC Title 49.

1997-98 Interim and 56th Legislative Assembly

The study of telecommunications law by the commission during the 1997-98 interim resulted in the recommendation of 1999 House Bill No. 1050, which was a request for further study. The commission was assigned one study, Senate Concurrent Resolution No. 4055. The study directed the Legislative Council to study the potential for expansion of extended area telecommunications service. Extended area service is a service by which a subscriber of one exchange may call a subscriber in

another exchange without paying a toll fee or separate charge for the call. Usually the costs of extended area service are spread over the rates paid by all the subscribers in the involved exchange. In addition, once extended area service is implemented, it is typically mandated for all subscribers within an exchange. After studying extended area service and its alternatives, the commission made no recommendation.

In its review of this state's telecommunications law, the commission reviewed the federal Telecommunications Act of 1996 and its effect on universal service, access rates, competition, and this state's price cap. The 56th Legislative Assembly enacted seven bills that affected telecommunications law found in NDCC Title 49.

1999 House Bill No. 1050

This bill extended the commission through 2002 and encouraged the study of universal service support mechanisms.

1999 House Bill No. 1169

This bill prohibited a change in telecommunications services without authorization from the customer, commonly referred to as "slamming" and "cramming." The bill stated that slamming and cramming are unlawful practices.

1999 House Bill No. 1450

This bill provided that a telecommunications company may not be an eligible telecommunications carrier unless the company offers all services supported by federal universal service mechanisms throughout the study area.

1999 House Bill No. 1451

This bill prohibited any political subdivision from imposing a fee on a telecommunications company for the use of the political subdivision's right of way other than a fee for management costs. This bill applied retroactively to January 1, 1999.

1999 Senate Bill No. 2094

This bill made technical changes in the law that requires a person who makes telephones available to the public or to transient users of that person's premises to provide operator services through access code numbers to the services desired by the consumer at a charge no greater than the charge for using the prescribed provider of operator services.

1999 Senate Bill No. 2234

This bill prohibited the Public Service Commission from setting aside any telecommunications price in effect on January 1, 1999, for intrastate switched-access service provided by any rural telephone company upon complaint by an interexchange telecommunications

company that the price is unreasonably high, except a price for intrastate switched-access service in an exchange may be set aside to the extent it is unreasonably high as a consequence of recovery of costs of intrastate switched-access service in that exchange from any explicit federal or state mechanisms to preserve and advance universal service; a sale, assignment, or other transfer of ownership or control of that exchange after January 1, 1999; or reduction of prices after January 1, 1999, for any other services provided in that exchange. This bill expires July 31, 2001.

1999 Senate Bill No. 2420

This bill rebalanced rates among local, toll, and access, in a revenue neutral manner, with access charges and toll rates to be reduced by similar percentages and in a competitively neutral manner as a result of an increase in local rates. The bill allowed a telecommunications company with more than 50,000 subscribers to increase the monthly price of residential service up to \$15.50 after July 31, 1999, and up to \$18 after June 30, 2000. A telecommunications company increasing prices must submit a report to the Public Service Commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access by an annual amount not less than the annual revenue increase resulting from the service price increases.

The Public Service Commission has authority to investigate the increased prices and can set aside an unfair or unreasonable price increase. An unfair or unreasonable price must be above the price in effect on January 1, 1999, and the average cost for providing residential service must exceed the price resulting from the increase using embedded or forward-looking economic cost methodologies. The bill provided that a local exchange carrier can set residential exchange service prices below the maximum price cap provided it also lowers its interconnection prices at the same time.

The bill deregulated private line transport service and specifically identified those provisions of the federal Telecommunications Act of 1996 that the Public Service Commission is authorized to implement and granted the Public Service Commission authority to adopt rules regarding the Act.

The bill imposed uniform service quality standards among all providers. The bill provided that the Public Service Commission may not adopt a rule or order regarding the quality of service provided by telecommunications companies unless the rule is applicable to all telecommunications companies providing similar service in the same market area.

The bill prohibited certain acts to promote or regulate competition. The bill provided that a telecommunications company may not be required to construct facilities at the request or for the use of another telecommunications company except to the extent required by the federal

Act. The bill clarified that if a telecommunications company is required to incur nonrecurring costs in excess of the normal course of business and for the benefit of another company or a customer, the Public Service Commission generally must allow the burdened company to recover the cost in advance. The bill prohibited a telecommunications company from discriminating against another company by refusing to provide or delaying access to the company's services or essential facilities, providing access on terms that are less favorable than those the company provides to itself, or by degrading the quality of access or service provided to another company. The bill identified those sections of law which competitive local exchange carriers are required to meet and established the Public Service Commission's jurisdiction over those telecommunications companies regardless of size. The bill repealed the Public Service Commission's authority to exempt a company, transaction, or service from regulation if there is sufficient competition.

Although the bill extended the prohibition against requiring 1+ dialing parity from July 31, 1999, to January 1, 2000, this section of the bill was superseded by a Federal Communications Commission ruling that 1+ dialing parity must be offered by July 22, 1999. This ruling was in accordance with *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 835 (1999), in which the United States Supreme Court held that the Federal Communications Commission has general jurisdiction to implement the federal Act's local competition provisions.

Testimony on North Dakota Telecommunications Law

The commission received information and heard testimony on various aspects of North Dakota telecommunications law.

1999 Senate Bill No. 2420

The Federal Communications Commission has allowed suspensions of its rule that 1+ dialing parity must be offered by July 22, 1999, to rural companies to the extent that is allowed by state law, which was until January 1, 2000. Most rural telecommunications companies, approximately 20, asked for and received a suspension.

Senate Bill No. 2420 included a provision allowing the Public Service Commission to set aside some or all of the increase allowed by the bill if an investigation finds the resulting rates to be in excess of the cost of providing residential local exchange service. On June 6, 2000, the Public Service Commission opened an investigation to determine Qwest's cost of providing local exchange service in North Dakota. Immediately following the hearing, the Public Service Commission reviewed Qwest's access and toll price reductions taken in response to the local price increase to determine if

these reductions were revenue and competitively neutral.

The commission heard testimony before the hearings were held before the Public Service Commission. According to a representative from Qwest, the rebalancing allowed by the bill for the allowed increase to \$15.50 per month caused a 24 percent (approximately \$6.7 million) decrease in intrastate long-distance and switched-access prices. All customers received some benefit from the toll and access reductions; however, some received more than others by taking advantage of promotional rates. A representative from AT&T doubted the revenue neutrality of the proposals by Qwest.

AT&T argued that Qwest's access rates are too high. North Dakota has the highest access rates in Qwest's 14-state territory. The commission was informed that high access rates make it difficult for competition. For example, according to Qwest's figures interexchange carriers are charged six cents a minute on each end of a conversation for access. A high estimate of the cost of access for originating and terminating a telephone call is two cents per minute. Under the example, AT&T needs to charge 16 cents per minute to make four cents per minute on carrying intrastate telephone calls between Qwest customers. If Qwest charges 16 cents, it makes 14 cents per minute. Qwest charges under 10 cents per minute to some of its own customers. Competition at that price would cost the competitor more money than it would receive from customers and would enrich Qwest at the same time.

The commission heard testimony after the hearing by the Public Service Commission that AT&T's questions and concerns about the latest round of access charge reductions by Qwest had been answered and addressed to AT&T's satisfaction. The hearing determined that Qwest had lowered access charges as required by the bill.

1999 Senate Bill No. 2234

Senate Bill No. 2234 sets a floor for the price of access charged by rural telephone companies at the price on January 1, 1999. This floor expires on July 31, 2001. The commission was informed that the rates charged for access by rural companies are high in relation to cost.

Aggregator Exception

A representative of the University of North Dakota requested that universities and colleges that provide telecommunications services be designated as aggregators rather than as resellers or facilities-based carriers. The University of North Dakota is a reseller and a facility-based provider and has to follow certain state and federal rules that foster competition. These rules generally require resellers to provide dialing number parity, local number portability, and enhanced-911

enhancements. As a result, the university will need to make costly changes to its telephone system.

If universities and colleges were aggregators, they would be exempt from these laws. The university provides telecommunications services to Barnes and Noble, which is located on university property, to private vendors in the Memorial Union food court, to the credit union located on campus, and to the fraternity houses not located on university property. Although these telecommunications services are operated for a profit, the services are on state-owned or leased properties and are provided to educational-related entities, and the income is generally used for reinvestment to provide better telecommunications services.

Commission discussion concluded that drawing the boundary line of where a state-run telecommunications company may operate would be difficult.

FEDERAL TELECOMMUNICATIONS ACT OF 1996

Competition With Regional Bell Operating Companies

The federal Telecommunications Act of 1996, enacted on February 8, 1996, represented the first major revision of federal telecommunications law in more than 60 years. The primary intent of the law was to open all telecommunications markets to competition by developing fair rules for all participants. The Act was to bring to the long-distance market the benefits competition had brought to the local exchange market. The Act allows competition in local exchange markets and, when there is competition, allows the regional Bell operating companies to enter the interLATA long-distance market.

The Act provides for the development of competitive local exchange markets. There are three avenues for competition with the local exchange carrier--resale, lease or purchase of network elements, or overbuilding. The main rule is that each telecommunications carrier has a duty to allow interconnection. In addition, all local exchange carriers have a duty to offer resale. Each incumbent local exchange carrier has five main duties, which include the duty to negotiate, to provide for interconnection at any technically feasible point and of at least equal quality, to provide for unbundled access to network elements, to provide for resale at wholesale rates, and to provide for collocation for the physical location of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. The Act allows states to authorize their public utilities commissions to establish the access and interconnection obligations of local exchange carriers.

The particulars of interconnection between an incumbent local exchange carrier and a competitor may be determined one of three ways--negotiation, mediation, or arbitration. Any interconnection agreement adopted by

negotiation must be submitted for approval to the state public utilities commission.

The state public utilities commission may mediate or arbitrate an agreement. The Act provides for arbitration standards and procedures. The standard for arbitrating just and reasonable rates for interconnection and just and reasonable rates for network elements for unbundled access must be based upon the cost of providing the interconnection or network element and may include a reasonable profit.

One of the ironies of the Act is that it establishes cooperation as the essential prerequisite to competition. It requires federal and state regulators to cooperate in matters of policy. It requires incumbents to negotiate interconnection agreements, thereby cooperating with their competitors.

Under the Act, a Bell operating company may provide interLATA services if the company has filed an approved statement of generally available terms and has met a 14-point competitive checklist. A Bell operating company may file a statement of generally available terms with the state public utilities commission. The state public utilities commission may not approve the statement unless the statement complies with the pricing standards for interconnection and network element charges and the duties of interconnection. The Bell operating company may enter the interLATA market if the company is providing access and interconnection pursuant to an agreement with a facilities-based carrier and meets the 14-point competitive checklist.

During the 1997-98 interim, the commission reviewed competition faced by Qwest--the Bell operating company in this state. The commission received testimony on a report from Ostrander Consulting on the level of competition faced by Qwest and on what would be sufficient competition for deregulation. The Ostrander report concluded that in this state resale is not competition and facilities-based competitors are competition. At the time of the report, there were no significant facilities-based local exchange competitors in this state.

Rural Protections From Competition

The Act allows special protections for rural telephone companies. All local exchange carriers in this state are rural telephone companies, except Qwest. The duties of an incumbent local exchange carrier do not apply to a rural telephone company until the company has received a bona fide request for interconnection, services, or network elements, and the state public utilities commission determines the request is not unduly economically burdensome, is technically feasible, and is consistent with federal universal service. In addition, a rural telephone company may petition the state public utilities commission for a suspension or modification of the duties of a local exchange carrier or an incumbent local exchange carrier. The state public utilities commission must grant the petition if the public utilities commission

determines it is necessary to avoid significant adverse economic impact on users of telecommunications services, to avoid imposing a requirement that is unduly economically burdensome, or to avoid imposing a requirement that is technically infeasible and is inconsistent with the public interest, convenience, and necessity. Senate Bill No. 2420 (1999) authorized the Public Service Commission to exercise this authority.

Traditional competition may not work in rural cooperative areas. For there to be resale competition in rural cooperative areas, the customers who own a cooperative would have to lease services to another company so the other company could sell them back to the same customer. Competition would most likely come from facilities-based competitors taking the most profitable large business accounts (cherry picking). A natural monopoly may be the most efficient way to serve rural areas while ensuring that all customers have affordable service. A natural monopoly normally requires some controls on price so that service is affordable. This may come from customers if they run the company or if there is some other force that makes the monopoly benevolent.

Universal Service

The Act provides for a federal universal service fund. Universal service is the concept that every person should have a telephone. Under the Act, the term "universal service" is an evolving term that takes into account the access every American should have, and that term could include broadband in the future.

The Act creates a joint board that determines federal universal service support. Under the Act, only eligible telecommunications carriers may receive high-cost area federal universal service funds. An eligible telecommunications carrier is required to offer services that are supported by the federal universal service fund. In addition, the Act provides for discounts for educational providers and libraries.

Historically, the goals of universal service have been advanced through a federal universal service fund and through implicit subsidies. Under the Act, the goal of competition is aided by the replacement of implicit subsidies with explicit federal universal service funding. For there to be fair competition, implicit subsidies must be replaced with explicit subsidies.

Under the Act, each state public utilities commission is required to designate a common carrier as an eligible telecommunications carrier for a service area designated by the public utilities commission. Senate Bill No. 2420 (1999) authorized the Public Service Commission to exercise this authority. The Public Service Commission may, in the case of an area served by a rural telephone company, and must, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area. Before designating an additional eligible telecommunications

carrier for an area served by a rural telephone company, the Public Service Commission is required to find that the designation is in the public interest.

If no common carrier will provide the universal services, the Public Service Commission with respect to intrastate service must determine which common carrier or carriers are best able to provide the services and is required to order the carrier or carriers to provide the service. The Public Service Commission is required to permit an eligible telecommunications carrier to relinquish its designation if there is more than one eligible telecommunications carrier in the service area.

Nonrural Companies

During the 1997-98 interim, the Federal Communications Commission decided the percentage of universal service support provided by the federal mechanism was to be 25 percent of the cost for providing universal service to high-cost nonrural areas; however, this decision was not made final.

The 75/25 percent split has been dropped in favor of a new mechanism that consists of a two-part methodology that considers both costs of providing support services and a state's ability to support those costs using the state's own resources. Specifically, the Federal Communications Commission completed development of the cost model that will be used to estimate the large telephone company's forward-looking cost of providing service. The federal cost model is for the purposes of determining federal universal service support and is not appropriate for other purposes, such as determining prices for unbundled network elements. In addition, the Federal Communications Commission adopted a methodology that uses the costs generated by the cost model to calculate the appropriate level of support for nonrural carriers serving high-cost areas. The new forward-looking mechanisms use a single national cost benchmark of 135 percent against which all carrier's forward-looking costs of providing supported services are compared to determine their need for support. If a carrier's forward-looking cost of providing service exceeds 135 percent of the national average cost per line, the new high-cost support mechanism will provide federal support for all intrastate costs that exceed this benchmark. The Federal Communications Commission also adopted a transitional hold harmless measure. During this period, no large telephone company will receive less support under the new high-cost support mechanism than it receives under the existing mechanism. Nonrural carriers in North Dakota do not receive a subsidy nor will they receive a subsidy under the new rules.

The commission received testimony from rural cooperatives concerning the Federal Communications Commission decision and application of that decision to rural cooperatives. The rural cooperatives were concerned that the Federal Communications

Commission will cap universal service funding at present levels; that the Federal Communications Commission will adopt a forward-looking cost model instead of one based on actual or historical costs because a forward-looking cost model does not take into account the difficulty and expense of providing telephone service in rough terrain with great expanses; and that the benchmark will be set at a single national cost benchmark of 135 percent. A 135 percent standard of high cost for nonrurals, instead of the previous 115 percent, eliminated some companies, customers, and states from the receipt of federal universal service funds.

Rural Companies

The federal universal service support that exists for rural carriers will not be changed before 2001. The first step is for the Rural Task Force to make recommendations to the Federal-State Joint Board on Universal Service. After the board receives the recommendations, it will make its recommendations to the Federal Communications Commission, which will make the final decisions relating to a rural universal service fund.

The Federal-State Joint Board on Universal Service formed the Rural Task Force from a broad cross-section of the telecommunications industry to provide recommendations on appropriate high-cost universal service mechanisms and policies for areas served by the nation's more than 1,000 rural telephone carriers and those carriers that serve in insular areas. The Rural Task Force released its report on September 29, 2000. In the report, the Rural Task Force made the following recommendations:

1. The recommendations should be implemented immediately and remain in place for a five-year period.
2. The modified embedded cost mechanism should be adopted for sizing the rural carrier federal universal service fund.
3. The synthesis model should not be used for determining the forward-looking costs of rural carriers.
4. A flexible system for disaggregating support should be used to establish the portable per line support available to all eligible telecommunications carriers with timely distributions.
5. States should be delegated responsibility for overview of the use of universal service support in a manner similar to that used for nonrural local exchange carriers.
6. The services included within universal service should be reviewed and a "no barriers to advanced services" policy should be adopted.
7. Modifications to the caps and limitations on universal service funding which currently exist should be enacted, including:

- a. The high-cost loop fund should be rebased by increasing it to \$118.5 million, grown by an annual factor, and including a safety net;
 - b. The corporate operations expense limitation should be adjusted for growth; and
 - c. A safety valve mechanism should be added to the limitation on support for acquired or transferred exchanges.
8. A set of principles should be used in addressing implicit support in interstate access charges, and high-cost fund III should be created to take the place of any implicit support removed from interstate access.

Eligible Telecommunications Carriers - Wireless Services

The commission heard testimony on the status of wireless service companies as eligible telecommunications carriers. Wireless service has the technical capability to provide competition in rural portions of this state as an eligible telecommunications carrier. Even though technologically possible, however, wireless service does not provide high rates of speed. It is argued that wireless service could reduce the subsidies needed for universal service because wireless service has a lower cost of service in some areas of the state.

The Public Service Commission hearing on whether to give eligible telecommunications carrier status to Western Wireless began on October 29, 1998, and may have been the first hearing of its kind in the nation. The Public Service Commission determined that Western Wireless cannot be an eligible telecommunications carrier. The decision was based on whether the market can handle two competitors and if consumers will benefit from competition. This decision was contrary to a wireless service decision made in Minnesota.

State Universal Service Funds

Section 254(f) of the federal Telecommunications Act of 1996 provides:

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

Many states have enacted legislation on universal service after the passage of the Act. The commission received information on the universal service funds in other states, in particular Montana's.

Montana Universal Service Fund

In 1997 Montana enacted temporary legislation that expires on December 31, 2001. The legislation requires that state's public utilities commission to establish and administer a universal service fund that provides affordable services in high-cost areas. The fund must complement the federal fund; be competitively and technologically neutral in funding and distribution; provide specific, predictable, and sufficient mechanisms of support for high-cost areas; and allow for a federal support system for schools, libraries, and health care providers.

The universal service fund must support the following services:

1. Voice grade access to the public-switched network.
2. Dual-tone multifrequency signaling or its equivalent.
3. Single-party service.
4. Access to emergency services.
5. Access to operator services.
6. Access to interexchange services.
7. Access to directory assistance.

Contributions to the Montana universal service fund are collected by the daily administrator on a monthly basis. The amount is calculated by determining the total revenue for all telecommunications carriers from the preceding year and determining the funds needed for distribution for universal service for the upcoming year and then computing the uniform percentage amount of revenue that will produce the desired distribution. The amount is adjusted for the previous year's shortfalls and excesses.

Distributions under the universal service fund are paid to eligible telecommunications carriers that offer the services supported by the fund. The public utilities commission is to calculate the distribution for designated support areas. A designated support area for a rural telephone company is its service areas unless the rural telephone company voluntarily adopts the proxy model adopted by the public utilities commission. A designated support area for all other telecommunications carriers means a geographic area determined by the public utilities commission which must be smaller than a wire center. The amount of support an eligible telecommunications carrier receives is the amount of costs in its designated support area minus the benchmark amount. The public utilities commission determines the benchmark.

If there is an additional eligible telecommunications carrier in a designated support area, the additional carrier has access to the universal service fund on the same basis as the rural telephone company. Both

carriers must receive distribution based on the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. Support for each line is based on the rural telephone company's cost as determined in the equation for the situation when there is only one eligible telecommunications company and distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the public utilities commission.

Based on a competitive bidding process, the public utilities commission is to choose a daily administrator for the universal service fund. The daily administrator may not be a telecommunications carrier. The daily administrator has the duties of providing monthly reports and annual audit reports to the public utilities commission. In addition, the daily administrator must make available financial accounts for viewing by telecommunications companies and the public. The public utilities commission may investigate and make orders concerning the accounts and practices of the daily administrator. The administration costs must be paid from the fund.

North Dakota Universal Service Fund

The need for a state high-cost fund is supported by three assumptions. First, it is assumed penetration decreases when the cost of dial tone increases. Second, competition will cause rates to move toward costs. As a result, there will be rate restructuring in which more revenue is received from residential customers. In addition, there will be more revenue from rural areas due to geographic deaveraging. Third, it is assumed that federal support for rural services will not be adequate. The third assumption is the reason the commission reviewed the development of the federal nonrural and rural universal service funds.

There are four reasons why a high-cost fund may not be needed. First, the elasticity of demand for telephone service may not be great. In other words, people may keep their telephones even if prices rise significantly. Second, other programs may be adequate, including Lifeline and Linkup. Third, rate restructuring and deaveraging may not happen. Finally, technology may provide a more cost-effective way to keep a customer connected within a level of affordability.

Although many questions arise concerning the creation of a high-cost fund, there are four basic questions:

1. Are prices for certain services unaffordable for the average customer?
2. Who should contribute to the universal service fund?
3. How will it be determined how much each eligible company will receive in universal service funds?
4. How will the fund be administered?

The Basics

The commission reviewed programs most frequently supported by state universal service funds. Programs supported by state universal service funds include high-cost support; revenue recovery or rate rebalancing; enhanced-911; telecommunications relay service; the Lifeline program; the Linkup program; state support for schools, libraries, and health care facilities; and the provision of special telecommunications equipment for physically challenged individuals. Commission discussion indicated the focus of a state universal service fund should be on a high-cost rural fund, although it was discussed that the universal service fund should help schools and businesses. The commission focused on the creation of a high-cost fund because of the potential need if the federal fund left a revenue shortfall for the companies in the rural areas of this state.

Another reason for creating a state universal fund is to remove implicit subsidies in access rates. The cost of providing local service in rural areas is in excess of what rural cooperatives are charging for the service. The federal universal service fund and access charges provide for profitability and universal service within rural areas. The committee was informed making rural access rates comparable with urban access rates is important to economic development in rural areas; however, rural companies need high access rates if there is not any universal service funding to fill the gap left by lower-access rates.

The commission was informed that on average it takes between 12 to 24 months from legislation until operation of a state universal service fund. Nine months has been the shortest duration of time from legislation to operation. An option provided to the commission was for a statutory mechanism that would allow for the creation of a universal service fund based upon conditions that necessitate the need for a fund, such as an underfunded federal fund.

The commission received testimony on the principles that should guide the commission in creating a state universal service fund. According to a representative from Western Wireless, the core principles of a universal service fund should be as included within the federal Telecommunications Act of 1996:

1. A universal service fund must be competitively and technologically neutral. Universal service support mechanisms should not unfairly advantage or disadvantage any technology or company over another technology or company.
2. Any kind of carrier should be able to be an eligible telecommunications carrier.
3. Subsidies must be portable.

The commission was informed by a representative from MidContinent Communications that nontraditional telecommunications companies should be included when creating a state universal service fund. Legislation creating a state universal service fund should allow for

the inclusion of areas of technology that are not traditionally thought of as telecommunication carriers.

The commission was informed by a representative from AT&T that AT&T has five positions in relation to a state universal service fund. These positions are:

1. North Dakota should not create a state universal service fund until there is sufficient evidence of need.
2. If there is a state universal service fund, it should be narrowly targeted to the need.
3. The fund should prohibit double recovery.
4. Access charges should be reduced and based on cost.
5. State universal service funds should be portable.

Contributions

The commission received testimony on contributions to a state fund. Vermont and Texas assess interstate and international revenues as well as intrastate revenues. It appears Vermont assesses these revenues because they were the first universal service fund and have a relatively small area to assess. It appears Texas assesses these revenues because of the need for a large funding amount. In addition, Texas has a history of assessing these sources. Before the universal service fund, Texas had an infrastructure fund that required contributions from the same sources of revenue.

Telecommunications service providers that would have to pay into the fund and not receive moneys from the fund, e.g., cable companies, expressed concern about what percentage of revenues would be required as a contribution. The size of the fund would depend upon the need created by federal action on universal service. Until the Federal Communications Commission makes decisions concerning federal universal service, it will be difficult to determine the percentage of revenues required to produce the amount of income needed for a state universal service fund. Commission discussion included consideration of having a cap placed on the fund to limit the percentage of contribution.

Distributions

Without a formula or benchmark of affordability to determine which telephone lines would receive funding, it is impossible to say how many people would benefit from a state universal service fund; however, even if this information were available, it would be difficult to determine because the concept of the fund is that the funding goes to each line and not to subscribers.

The commission was informed by a representative from Western Wireless that the idea of competition includes the idea of rewarding efficiency and that a state universal service fund should not penalize efficiency or reward inefficiency because it is in the best interest of rural customers to have competition.

Commission discussion indicated that taxpayers should not have to pay the same amount of money to a company that is able through technology to provide lower-cost services as it has to pay to more costly service providers. The amount should be based on cost, and a lower cost to provide a service should result in lower payments under the fund because the purpose of a state universal fund is not to benefit the telecommunications companies but to benefit the high-cost consumers and citizens of this state.

Administration

The commission received testimony on the administration of universal service programs in Arizona, Arkansas, Kansas, Nevada, Oklahoma, Texas, and Vermont by the National Exchange Carrier Association, Inc. (a private not-for-profit corporation). In addition, information was provided on Nebraska and Wyoming.

The commission was informed as to the lessons learned by the National Exchange Carrier Association, Inc., relating to fund implementation and design. The key to good administration of a universal service fund is to have a good working relationship between commission staff and the administrator. In addition, precise definitions make it easy to administer a fund. In particular, the association made the following recommendations.

1. Broad industry participation during fund rule-making and establishment phases lessens confusion and resistance during implementation.
2. A single collection mechanism for various universal service and other programs (e.g., enhanced-911, telecommunications relay service) simplifies processes and creates cost-efficiencies. Enhanced-911 collections are often incorporated into a state universal service fund. The combination of enhanced-911 funding with universal service funding provides for ease of administration by having one collection system.
3. An assessment based on percentage of revenues, applied to all service providers, ensures contributions are collected in a nondiscriminatory, competitively neutral manner.
4. An assessment of "retail" intrastate-only revenues avoids double assessing. Precise definitions of assessable and exempt revenue categories (pay phone, wireless, vertical services, etc.) clarifies requirements and reduces confusion.
5. A payment-after-collection methodology reduces cash flow fluctuations and decreases the possibility of fund shortfall.
6. Monthly billings and collections of service providers and the establishment of a de minimus threshold to exempt small contributors from assessments or require less frequent

payments offer administrative simplicity and reduce costs.

7. Documentation clearly delineating roles of the state regulatory agency staff and the fund administrator streamlines processes and reduces overlaps.
8. The Legislative Assembly or Public Service Commission should define explicit criteria for determining support payments disbursed from the fund.
9. A "contingency factor" should be built into at least the initial funding requirements to offset cash flow fluctuations, cover initial delinquencies, and help account for revenue seasonality during fund startup.
10. The Legislative Assembly should consider developing a fund shortfall payment prioritization plan, which provides the administrator with specific guidelines for prioritizing or prorating payments, if fund requirements exceed collections for a period.
11. Service providers' payments into the fund should not be treated as tax collections and should be held separate from the state's general fund.
12. Public benefit funds are "self-sustaining" so appropriations to "fund the fund" or a legislative-mandated cap on fund size is not required.

State Universal Service Fund Bill Draft

The commission considered a bill draft that would have created a state universal service fund based on Montana's law. The bill draft created a state universal service fund for the purpose of providing funding in case of an underfunded federal universal service fund. In addition, the state universal service fund included an advanced services fund that supports access in high-cost areas to 128,000 baud at rates comparable to urban areas. Any eligible telecommunications carrier, including Qwest, could receive funding; however, nonrural companies would receive funding for high-cost areas without a competitive alternative. The advanced services fund was in addition to and not in conflict with the statewide network under development by the Information Technology Department. The advanced services fund in the bill draft addresses the issue of providing reasonable low-cost service to private businesses, which the Information Technology Department's plan did not address. As such, the fund would encourage economic development.

Interested persons recommended substantive changes to the bill draft. The bill draft went through three drafts. During commission consideration, some of the following recommendations were added to the bill draft, as noted after the recommendation.

The recommendations of the North Dakota Association of Telephone Cooperatives were:

1. The concept of an affordability benchmark should be expanded to give the Public Service Commission some parameters for determining the benchmark. The commission was urged to create a statement or definition that provides for a philosophy in determining the affordability benchmark.
2. The determination of cost should not be limited so as to exclude extended area service.

The recommendations of Western Wireless were:

1. Portability of support should be specifically required.
2. The requirement of providing data service of at least 128,000 baud should be removed because the baud requirement is not technologically neutral. The concept of having a universal service fund is for that fund to support basic service in high-cost areas, and 128,000 baud is a luxury although future changes in technology may make 128,000 baud basic service. The federal fund does not support 128,000 baud, and all urban areas do not have 128,000 baud.
3. The requirement of some usage to the public-switched network should be defined to mean local usage. The bill draft was revised to include this suggestion.
4. The requirement of customer's choice in access to interexchange services should be removed because it is inconsistent with the federal scheme. The commission discussion regarding a customer's choice of interexchange services as a service supported by the fund pointed out that allowing customers to choose their interexchange carriers keeps customers from becoming captive to the local exchange's interexchange carrier of choice. In addition, the state can have requirements different from what the federal government has for the federal universal service fund.
5. Lifeline and toll limitations for lifeline should be added to the list for services supported by the fund.

The recommendations of the National Exchange Carrier Association were:

1. The commission should consider whether to assess retail interstate revenues, which include international revenues.
2. The general policy provisions should be clarified. The bill draft was revised to remove the general policy provisions.
3. The requirement of all funds being transferred to the State Treasurer should be removed for administrative convenience. The committee was informed that the transfer was required by the Constitution of North Dakota.

4. The benchmark should be set on a statewide basis.
5. The calculations for the fund should not be set in statute and should parallel the federal mechanism. The bill draft was revised to include this suggestion.
6. The issue of passthrough of contributions should be specifically addressed in the bill draft.

The recommendations of the Public Service Commission were:

1. The definitions should be reviewed to ensure that those who pay into the fund and collect from the fund are within the purpose of the bill draft. In particular, should the bill draft address private line service as a telecommunications service?
2. The general policy provisions should be reviewed because the provisions are ambiguous and can be interpreted to be contradictory to the specific provisions in the bill draft. The bill draft was revised to remove the general policy provisions.
3. There should be a definition of the need that is required for the Public Service Commission to create a fund. The bill draft was revised to include this suggestion.
4. Access to the supported service of 128,000 baud should be clarified to say whether it is a one-time support for network improvements or an ongoing monthly support of advanced services. The bill draft was revised to include this suggestion.
5. Timeframes should be set in light of the recommendations of the Rural Task Force. The bill draft was revised to include this suggestion; however, it was recommended that the commission consider including a start date for distributions and collections.
6. The costs of administration should be specifically listed, and the draft should include a time for the payment of costs. The bill draft was revised to include this suggestion.
7. The cost methodology, including processes and timeframes, should be consistent with the federal fund if the state fund is meant to complement the federal fund. The bill draft was revised to include this suggestion. In addition, the commission should consider addressing the problem of referencing the federal methodology in that the methodology may change after the adoption of the Act.
8. The commission should consider including an upper limit to the size of the fund.
9. The commission should consider specific provisions for passthrough of charges to customers.
10. The commission should consider giving the Public Service Commission more jurisdiction

over the bill draft, especially regarding the billing for, payment, and collection of contributions.

The commission was informed there are two different ways in which the state could provide provisions different from federal law. First, the state could provide a different administrative procedure. The committee was informed it is very important to use the same administrative procedure as federal law because of administrative convenience; the Public Service Commission would be unable to manage the fund unless it copied the federal fund; and telephone companies could do exactly what they do for the federal fund and send a copy of that paperwork to the state, thereby providing administrative convenience to telephone companies. Second, the state could have a policy decision different from the federal law. The bill draft differs from federal law in providing advanced services and by having the distribution based upon each carrier's cost. The bill draft provides for two different ways to determine subsidies when there is competition in a rural area. The commission was informed that this conflicts with Section 254(f) of the federal Act and with the concept of portability. Under the federal Act, if you win a customer, you get the subsidy.

According to a representative of AT&T, in light of the Rural Task Force recommendations, no fund is needed to complement the federal fund. If the recommendations are adopted by the Federal Communications Commission, there will be more money, more services covered, and more state control of that money. The representative argued that the provision of 128,000 baud is an economic development policy and should be supported by a general tax, not a tax on telecommunications service providers. In addition, the advanced services fund should not refer to 128,000 baud because it is suggestive of supporting integrated services digital networks and therefore is not technologically neutral. Other advanced services include variations of digital subscribers, cable, satellite, and wireless.

Arguments regarding the inclusion of 128,000 baud as a service funded by the state universal service fund pointed out that the requirement of 128,000 baud is meant to encourage high-speed Internet access to the rural areas of this state because access to the Internet is no longer a luxury. In two years, 128,000 baud will be an inadequate advanced service. It was said a baud rate of 128,000 would provide a minimum standard for fairness between urban and rural areas and is intended to be technologically neutral. The argument was made that this state can and should be more progressive than the federal universal service fund.

Arguments also pointed out that the residents of cities have to pay for high-speed data services, and it would be unfair for city residents to have to pay for high-speed data services for rural areas through the fund. It was countered that the subsidy for the 128,000 baud in the bill draft is intended for the line, not for the service.

The intent under the bill draft was for people to pay for the service at a rate comparable to urban rates.

The commission considered and adopted an amendment to clarify that the advanced services fund operates independently from the existence of the basic universal service fund.

The commission considered but did not adopt an amendment to the bill draft that would have required rates of at least 115 percent of urban rates for those in rural areas before there is eligibility for universal service funding. The amendment was intended to require customers in rural areas to pay a little more than what urban customers pay to be able to take advantage of a subsidy. It was agreed that requiring rurals to raise their rates to 115 percent of those rates charged in urban areas would only be symbolic because the extra revenue would be passed back to cooperative members in most rural areas. In addition, the commission considered setting a minimum benchmark at 115 percent of urban rates. Discussion pointed out that finding a benchmark is part of creating a universal service fund; however, setting price is traditionally not part of a universal service fund.

The commission considered but did not adopt an amendment that would have limited local rates to a maximum of a 10 percent increase for universal service

funding. Whether a limit would need to be placed on the fund is unclear because the Federal Communications Commission has not made a decision based upon the Rural Task Force recommendations. Commission members pointed out that the Legislative Assembly would be able to put a cap on the fund and would have better information when it meets than is available at present.

The commission considered and adopted an amendment to base, in part, a company's claim from the fund on excluding costs equivalent to 115 percent of rates charged in urban areas. The amendment would not require rural customers to pay more than urban customers.

Conclusion

The commission makes no recommendation regarding a North Dakota universal service fund. Although commission discussion indicated support for the philosophy in the bill draft that was considered, and some members supported the bill draft as a tool for dialogue and debate in the next legislative session, others were not satisfied with the bill draft because they believed it was too complex or unfair to urban customers.

TAXATION COMMITTEE

The Taxation Committee was assigned four studies. House Concurrent Resolution No. 3049 directed a study of taxation and regulatory incentives for the lignite industry in order to improve its competitive position in the energy marketplace and to identify federal and international impediments to development of the lignite industry and potential state actions to address such impediments. House Bill No. 1462 directed a study of application, enforcement, and administration under the fuels tax laws. Senate Concurrent Resolution No. 4040 directed a study of the feasibility and desirability of establishing a mechanism to allow farmers and ranchers to shelter a portion of their income in an agricultural real estate asset retirement-type fund. Senate Concurrent Resolution No. 4041 directed a study of potential tax incentives and regulatory relief that would encourage greater investment participation by North Dakota residents in agricultural business ownership.

Committee members were Senators Randel Christmann (Chairman), Meyer Kinnoin, Kenneth Kroepflin, Randy A. Schobinger, Bob Stenehjelm, Vern Thompson, Steve Tomac, and Herb Urlacher and Representatives Wesley R. Belter, Mick Grosz, Pam Guleson, C. B. Haas, Gil Herbel, Stacey L. Mickelson, Ronald Nichols, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt, Ben Tollefson, John M. Warner, and Ray H. Wickenheiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

LIGNITE INDUSTRY STUDY

Background

The lignite industry study was a continuation of the study conducted by the Taxation Committee during the 1997-98 interim. The study resolution states that taxation and regulatory compliance costs constitute up to 30 percent of the production costs for North Dakota lignite and that reduction of these costs could improve the competitive position of North Dakota's lignite industry.

Coal Severance Tax

A 1973-74 interim Legislative Council study of coal severance taxes, property tax imposition on coal gasification plants, distribution of revenues, and aid for impact of coal development led to creation in 1975 of a coal severance tax, coal impact aid program, and a privilege tax on coal conversion facilities.

Under the 1975 law, the coal severance tax rate was set at 50 cents per ton plus an amount determined by an escalator clause based upon wholesale prices. In 1977 the Legislative Assembly increased the base rate of the tax to 65 cents per ton plus an amount determined by

application of a modified escalator clause. In 1979 the coal severance tax was set at a base rate of 85 cents per ton with a modified escalator clause. The formula for determining the coal severance tax rate remained unchanged until 1987, and the rate imposed reached a high of \$1.04 per ton. In 1987 legislation reduced the general coal severance tax rate to 75 cents per ton, eliminated the escalator clause, and imposed an additional separate tax of two cents per ton, with the proceeds of the separate tax allocated to the lignite research fund. The rate of tax has remained unchanged since 1987.

The coal severance tax is in lieu of sales or use taxes. Any coal mined in this state which is exempt from the severance tax is subject to sales and use taxes unless a sales or use tax exemption exists. Severance tax exemptions are provided for coal used primarily for heating buildings and coal used by the state or any political subdivision. Purchases by the state or a political subdivision are exempt from the sales tax, but coal used for heating privately owned buildings is not exempt from the sales tax. North Dakota Century Code (NDCC) Section 57-61-01.4 provides a severance tax exemption for coal used in agricultural processing or sugar beet refining plants located in North Dakota or adjacent states. Coal exempted for these purposes also is exempt from sales and use taxes under Section 57-39.2-04(44). Under Section 57-61-01.3, the severance tax rate is reduced by 50 percent if the coal is to be burned in a cogeneration facility. Under Section 57-61-01.7, coal mined for out-of-state shipment was subject to a 50 percent reduction in the severance tax rate from July 1, 1995, through June 30, 2000, and was eligible for waiver of the 35 percent local share of the tax.

Coal shipped into North Dakota for use in a coal conversion facility would not have been subject to North Dakota taxes under the law as it existed until 1997. Passage of 1997 House Bill No. 1467 provided that such coal would be subject to a special sales tax of six cents per million British thermal units and that revenue from the special sales tax would be allocated in the same manner as coal severance tax revenues. The 1997 law was challenged by Montana coal producers and declared unconstitutional by the South Central Judicial District Court in a February 1, 1999, decision. Passage of 1999 House Bill No. 1454 changed the sales and use tax rate for imported coal to 75 cents per ton to match the severance tax rate on North Dakota coal. This change was recommended by the Attorney General to address the constitutional problem with the 1997 law. The Kennecot Energy Company and Spring Creek Coal Company challenged the 1999 legislation because of the legislation's potential impact on their operations in Montana. On May 3, 2000, a North Dakota district court decision found that the 1999 legislation is

unconstitutional as a violation of the commerce clause of the United States Constitution. That decision is on appeal to the North Dakota Supreme Court.

An exemption from the state's 50 percent share of coal severance or sales taxes was created in 1997 by NDCC Section 57-61-01.8 for coal burned in small generating stations in this state or an adjacent state. This section also allows political subdivisions to waive collection of their share of tax revenues on such coal. This section is repealed effective July 1, 2003, by 1999 House Bill No. 1454.

Under NDCC Section 57-61-01.2, coal is considered to be severed and subject to the severance tax when it is first removed from the earth unless within 30 days of removal it is placed into a long-term storage deposit. If placed in storage, it is considered severed when removed from storage or pledged as collateral on a loan.

All severance taxes, penalties, and interest collected by the Tax Commissioner are transferred to the State Treasurer within 15 days of receipt and are credited to a special fund in the state treasury called the coal development fund. The revenue in the coal development fund is allocated under a detailed formula contained in NDCC Section 57-62-02. Fifteen percent of the revenue in the coal development fund is to be deposited in a permanent trust fund in the state treasury known as the coal development trust fund. This fund is held in trust and administered by the Board of University and School Lands for loans to coal-impacted counties, cities, and school districts. Under Section 57-61-01.5(2), 70 percent of deposits in the trust fund are to be transferred to the lignite research fund. Thirty-five percent of the revenue in the coal development fund is allocated to coal-producing counties in the proportion that the number of tons of coal severed in each county bears to the total number of tons of coal severed in the state. The remaining 50 percent of the revenue in the coal development fund is to be deposited in the state general fund, but after June 30, 1997, the general fund share of revenue from new production from clean coal demonstration projects is to be deposited in the lignite research fund.

Of the 35 percent portion of coal development fund moneys which is distributed to coal-producing counties, 30 percent is paid by the county treasurer to incorporated cities of the county based upon population, 40 percent is deposited in the county general fund, and 30 percent is apportioned to school districts within the county based on average daily membership of each school district. The distribution formula within counties also provides for recognition of impact on surrounding areas not within the county. If the tipple of a currently active coal mining operation in a county is within 15 miles of another county in which no coal is mined, revenue apportioned from that coal mining operation is apportioned according to the same formula as county revenues with inclusion of cities, school districts, and the

general fund of the non-coal-producing county within certain geographical limits.

It is estimated that 59,670,900 tons of taxable lignite coal will be mined in North Dakota during the 1999-2001 biennium. Coal severance tax revenues for the 1999-2001 biennium are estimated to be \$45,916,128. Of this amount, the state general fund will receive \$22,346,122, allocations to political subdivisions will be \$15,663,611, and the coal development trust fund will receive \$6,712,977. The remaining \$1,193,418 will go to the lignite research fund.

Privilege Tax on Coal Conversion Facilities

The privilege tax on coal conversion facilities is imposed by NDCC Section 57-60-02. A coal conversion facility is defined as an electrical generating plant that converts coal into electrical power and has a capacity of 120,000 kilowatts or more or a facility that uses over 500,000 tons of coal per year to be converted into other products. Differing tax rates are imposed on different types of coal conversion facilities.

As enacted in 1975, the coal conversion facilities privilege tax on electrical generating plants was at a rate of one-fourth of one mill per kilowatt hour of electricity produced, and the tax on coal gasification plants was the greater of 2.5 percent of gross receipts or 10 cents per 1,000 cubic feet of synthetic natural gas. In 1983 an additional one-fourth of one mill per kilowatt hour tax was imposed on electrical generating plants. In 1985 the floor on the tax for coal gasification plants was increased from 10 cents to 15 cents per 1,000 cubic feet of synthetic natural gas. In 1987 the basis of the tax for electrical generating plants was changed from kilowatt hours of electricity produced to 60 percent of the installed capacity of each generating unit times the number of hours in the taxable period, and for damaged units, a reduced tax rate based on cost of repairs was established to be in effect until the unit is capable of generating electricity. Other 1987 legislation reduced the alternative tax for coal gasification plants from 15 cents to seven cents for each 1,000 cubic feet of synthetic natural gas produced and provided an exemption for any synthetic natural gas production in excess of 110 million cubic feet per day. In 1989 separate tax treatment was provided for coal beneficiation plants, providing an alternative tax of 20 cents per ton of beneficiated coal or one and one-quarter percent of gross receipts, whichever is greater. In 1991 legislation was enacted to provide a five-year exemption for new electrical generating plants from all but 35 percent of the one-fourth of one mill tax based upon production capacity of the generating unit, and the 35 percent remaining tax is allocated entirely to the county and may be eliminated by the board of county commissioners.

For electrical generating plants, the present coal conversion tax is at a rate of one-half of one mill on each kilowatt hour of electricity produced for the purpose of sale. This tax is divided into two separate one-fourth of

one mill taxes, revenues from each of which are subject to different allocations.

For coal gasification plants, the rate of tax is either 2.5 percent of gross receipts or seven cents per 1,000 cubic feet of synthetic natural gas, whichever is greater. In 1985 gross receipts from the sale of a capital asset and any financial assistance provided by the federal government were exempted from the coal conversion tax. A 1987 amendment exempted byproducts of the gasification process, to a maximum exclusion of 20 percent of all gross receipts of a facility. Passage of 1997 Senate Bill No. 2196 increased the gross receipts byproducts exclusion maximum from 20 to 35 percent until December 31, 2000, when the limit will revert to 20 percent. Senate Bill No. 2196 also exempted sales of carbon dioxide for oil and gas recovery from the gross receipts tax. Passage of 1997 Senate Bill No. 2339 extended the property tax exemption for a pipeline to transport carbon dioxide to 10 years after initial operation rather than commencement of construction and allowed the exemption to apply to a pipeline carrying carbon dioxide outside the state.

Under the coal conversion tax, each coal conversion facility is classified as personal property and is exempt from property taxes except taxes on the land upon which the facility is located. The coal conversion tax is in lieu of property taxes on the facility. The coal conversion tax is also in lieu of taxes on rural electric cooperatives and cooperative electrical generating plants that qualify as coal conversion facilities.

Allocation of coal conversion tax revenues is made annually on or before July 15 of each year. Revenue from one-fourth of one mill of the tax on electrical generating plants is deposited in the state general fund. Revenue from all remaining coal conversion taxes is allocated 65 percent to the state general fund and 35 percent to the producing county.

Revenue allocated to counties from the coal conversion tax is allocated within the county--40 percent to the county general fund, 30 percent to cities in the county according to population, and 30 percent to school districts in the county on an average daily membership basis.

Total revenue from coal conversion taxes for the 1999-2001 biennium is estimated to be about \$30,613,804. Of that amount, the state general fund is expected to receive about \$24,555,184 and political subdivisions are expected to receive about \$6,058,620.

Energy Development Impact Program

North Dakota Century Code Section 57-62-04 establishes an Energy Development Impact Office as a division within the office of the commissioner of the Board of University and School Lands. The director of the Energy Development Impact Office is required to develop a plan for the assistance of counties, cities, school districts, and other political subdivisions in coal development and oil

and gas development impacted areas and to make grants to counties, cities, school districts, and other taxing districts within the limitations of legislative appropriations for this purpose.

Section 57-62-06 provides that it is the intent of the Legislative Assembly that the moneys appropriated to, and distributed by, the Energy Development Impact Office for grants are to be used by grantees to meet initial impacts affecting basic governmental services and directly necessitated by coal development or oil and gas development impact. The Energy Development Impact Office is funded for oil and gas development impact grants, but grants for coal development have not been funded by legislative appropriation since 1987.

Lignite Research, Development, and Marketing

North Dakota Century Code Section 54-17.5-02 requires the Industrial Commission to consult with the Lignite Research Council established by executive order in matters of policy affecting the administration of the lignite research fund. In evaluating applications for funding from the lignite research fund for North Dakota's lignite research, development, and marketing program, the Industrial Commission and the Lignite Research Council are required to give priority to those projects, processes, or activities that will preserve existing jobs and production, which will create the greatest number of new jobs and the most additional lignite production and economic growth potential in coal-producing counties or those counties with recoverable coal reserves, which will attract matching private industry investment equal to at least 50 percent or more of the total cost, and which will result in development and demonstration of a marketable lignite product or products with a high level of probability of rapid commercialization. For marketing applications, priority must be given to those projects, processes, or activities that develop baseline information, implement specific marketing strategies, and otherwise contribute to the effective marketing of lignite and its products. For reclamation applications, priority must be given to those projects, processes, or activities that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface-mined land to its original or better productivity as soon as possible.

Under NDCC Section 54-17.5-05, the Industrial Commission is authorized to issue evidences of indebtedness payable solely from appropriations by the Legislative Assembly from moneys in the lignite research fund, revenues or income that may be received by the commission from lignite projects, processes, or activities funded with the proceeds of the commission's evidences of indebtedness, and revenues or income received by the commission from any other source under Chapter 54-17.5. The evidences of indebtedness may be issued for the purpose of funding research, development, and marketing projects, processes, or activities directly related to lignite and products derived from lignite. The

Industrial Commission must maintain a reserve fund for evidences of indebtedness issued by the Industrial Commission relating to lignite resources. The Industrial Commission must submit to the Office of the Budget, not later than July 15 of each year preceding the biennial session of the Legislative Assembly, a request for the amount required to be appropriated from the lignite research fund to pay debt service on outstanding evidences of indebtedness during the following biennium.

North Dakota Century Code Section 54-17.5-06 provides a procedure through which an entity may file a request with the Industrial Commission to have materials designated as confidential which have been submitted to, or made or received by, the Industrial Commission and the Lignite Research Council relating to trade secrets or commercial, financial, or proprietary information. In addition, a request to have material designated as confidential is considered to be confidential.

For the 1999-2001 biennium, the estimated receipts for the lignite research fund are approximately \$6,252,502. That amount includes \$1,193,418 from the separate and additional two-cent coal severance tax, about \$4,699,084 from the coal severance tax deposited in the permanent coal development trust fund, and about \$360,000 from interest income. The balance at the beginning of the 1999-2001 biennium was approximately \$5,478,001.

Estimated expenditures from the lignite research fund for the 1999-2001 biennium are \$10,450,000. Estimated expenditures include \$500,000 for a lignite marketing feasibility study and \$9,950,000 for administration and development of the lignite research, development, and marketing program. The Industrial Commission has authorized an investment of \$4.2 million from the fund in the Dakota Gasification Company's lignite to anhydrous ammonia project and issuance of tax-exempt bonds to provide \$8.1 million to the Dakota Gasification Company. The bonds are for 10-year financing with annual principal and interest payments of approximately \$1,085,000 from lignite research fund revenues. The total bond cost to the fund was estimated to be \$11 million.

Regulation of Coal Mining

North Dakota Century Code Section 38-12.1-04 provides that the Industrial Commission has jurisdiction over all persons and property necessary to regulate the exploration for coal on state and private lands within the state. The State Geologist is required to act as a supervisor responsible for enforcing the regulations and orders of the commission. The commission may require the furnishing of a reasonable bond conditioned upon the full compliance with state law and rules of the commission prescribed to govern the exploration for coal. In addition, the commission may require the delivery to the State Geologist of basic data collected during the exploration for coal and may require plugging, covering, or reburial of all holes, pits, or trenches

excavated during the course of coal exploration. The commission also has authority to protect environmental quality, general health, and safety and economic values and may inspect all drilling or exploration sites. The commission is directed to require that any lands substantially disturbed in coal exploration be reclaimed, including excavations, roads, drill holes, and the removal of facilities and equipment.

North Dakota Century Code Section 38-12.1-05 requires a permit from the State Geologist before the commencement of exploration for coal. In addition, that section prohibits the removal of more than 250 tons of coal pursuant to an exploration permit without first obtaining a permit from the Public Service Commission.

North Dakota Century Code Chapter 38-14.1 addresses surface mining and reclamation operations. Under that chapter, the Public Service Commission is designated the state regulatory authority for all purposes relating to the federal Surface Mining Control and Reclamation Act of 1977. The commission is authorized to issue permits for surface coal mining operations and to adopt regulations necessary to carry out Chapter 38-14.1 and the federal Surface Mining Control and Reclamation Act of 1977.

North Dakota Century Code Section 38-14.1-04 authorizes the Public Service Commission to develop a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations and to develop methods of implementing land use planning decisions concerning surface coal mining operations. The commission is also authorized to develop procedures through which determinations of the unsuitability of land for surface coal mining are integrated as closely as possible with land use planning and regulation processes at the state and local levels.

North Dakota Century Code Section 38-14.1-06 allows any person having an interest that is or may be adversely affected, including state agencies other than the Public Service Commission, to petition the Public Service Commission to hold a hearing for the purpose of having an area designated as unsuitable for surface coal mining operations under Section 38-14.1-05 or to have such designation terminated. The section requires the commission to hold public hearings in the locality of the affected area for each petition filed. The commission may designate an area as unsuitable for surface coal mining operations after a hearing if the commission determines that reclamation is not technologically and economically feasible or that the operations will be incompatible with existing state or local land use plans or programs. The commission may also designate an area as unsuitable if mining operations will affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; affect renewable resource lands in which the operations could

result in a substantial loss or reduction of productivity of long-range water supply or food or fiber products, and the lands include aquifers and aquifer recharge areas; or affect natural hazard lands in which the operations could substantially endanger life and property, and the lands include areas subject to frequent flooding and areas of unstable geology.

North Dakota Century Code Section 38-14.1-14 provides the requirements for permit applications for surface coal mining and reclamation operations. Among other things, the permit application requires the applicant to provide cultural resource information and submit a reclamation plan for the land. In addition, the permit applicant is required to file a performance bond in an amount sufficient to complete the reclamation plan.

North Dakota Century Code Chapter 38-14.1 establishes procedures for ruling on permit applications, permit renewals, and permit revisions. Section 38-14.1-24 establishes general performance standards applicable to all surface coal mining and reclamation operations.

North Dakota Century Code Section 38-14.1-27 establishes requirements for the maintenance of records for surface coal mining and reclamation operations and provides for the monitoring and inspections of the operations.

North Dakota Century Code Section 38-14.1-28 authorizes the Public Service Commission to initiate enforcement procedures when an alleged violation is discovered.

North Dakota Century Code Section 38-14.1-29 allows the Public Service Commission to assess a civil penalty after opportunity for a public hearing for a violation of Chapter 38-14.1 or any rule adopted pursuant to that chapter.

North Dakota Century Code Section 38-14.1-40 authorizes any person having an interest that is or may be adversely affected to commence a civil action on that person's own behalf to compel compliance with Chapter 38-14.1 or any rule, order, or permit issued under the chapter. The action may be commenced against any person or governmental instrumentality or agency that is alleged to be in violation of any rule, order, or permit issued pursuant to Chapter 38-14.1 or against the Public Service Commission if there is alleged to be a failure of the commission to perform any act or duty under Chapter 38-14.1 which is not discretionary with the commission. In addition, any person who is injured or sustains property damage through the violation by any operator or permittee of any rule, order, or permit issued pursuant to Chapter 38-14.1 may bring an action for damages or permanent equitable relief.

North Dakota Century Code Chapter 38-14.3 establishes a surface mining and reclamation bond fund to be maintained at the Bank of North Dakota to provide bonds for the faithful performance of all surface coal mining

laws, rules, and permit conditions and terms. The bond fund is to be administered by the Industrial Commission.

Surface Owner Protection

North Dakota Century Code Chapter 38-18 was enacted in 1975 to provide the maximum amount of constitutionally permissible protection to surface owners from the undesirable effects of development of minerals underlying the surface of their property. A mineral developer is required to give the surface owner written notice of the type of land disturbance or mining operation contemplated by the mineral owner before the Public Service Commission may issue a permit to surface mine the land. The commission may not issue a permit to surface mine the land unless the permit application is accompanied by statements of consent executed by each surface owner whose land is included within the permit area. Chapter 38-18 also provides for the payment of surface damage and disruption payments to surface owners and requires a mineral developer to pay the entire cost of the surface reclamation necessitated by that developer's mining operation.

Administrative Rules

More than 300 sections of the North Dakota Administrative Code have been adopted by the Industrial Commission and Public Service Commission regarding coal exploration and surface mining and reclamation. Administrative rules of the State Department of Health and Tax Commissioner also affect coal mining operators. North Dakota Century Code Section 23-01-04.1 prohibits the State Department of Health from adopting administrative rules on air quality affecting coal conversion facilities which are more strict than federal rules or standards under the Clean Air Act (42 U.S.C. 7401 et seq.). Section 23-25-03.2 prohibits the State Department of Health from adopting administrative rules on sulfur dioxide air quality which are more strict than federal rules or standards under the Clean Air Act.

1997-98 Study of the Lignite Industry

During the 1997-98 interim study of the North Dakota lignite industry, the North Dakota Lignite Energy Council suggested, and the Taxation Committee agreed, that independent consultant analysis was necessary to assess the competitive position of lignite coal in the electric energy industry. A consultant study, funded in equal amounts by the North Dakota Lignite Energy Council and the Legislative Council, was conducted by Dr. David Ramsett, Director, Division of Economics and Public Affairs, University of North Dakota. Dr. Ramsett's report *Competition in North Dakota's Coal-Electric Utility Industry: Lignite vs. Subbituminous Coal*, reached the following major conclusions:

1. Coal is more important than ever to national energy production.

2. Open market competition exists at the wholesale level in electric energy production, and open market competition will soon become the norm at the retail level.
3. The driving force in the nation's coal industry is low-sulfur western subbituminous coal produced in Wyoming and Montana.
4. Users of subbituminous coal have enjoyed continuous price reductions due to rising productivity in mining and reduced costs of transportation.
5. Electric power producers choose the most cost-efficient energy source. Continuing price decreases in the delivered price of subbituminous coal to electric power plants in the region are threatening the economic viability of North Dakota's mine-mouth coal-electric power industry.
6. Coal taxation has become a bigger issue for the North Dakota coal-electric utility industry as the delivered price of subbituminous coal has dropped.
7. North Dakota must evaluate the economic effects of taxing lignite coal because of the economic impact and the state revenue impact of the coal-electric utility industry and the increasing potential that subbituminous coal could be burned in North Dakota power plants.

Significant changes are occurring in the national electric utility industry. The industry is moving from exclusive regional operation to open market sales. The industry was segregated and is moving to a national sales market, was regulated and is moving to free market competition, and is in transition to a character that cannot be determined at this time but will clearly be significantly different.

States in this region of the country are net exporters of electric power. States in the region are in competition with each other for markets. It is necessary to closely examine competitive factors in surrounding states to assess the continued economic viability of lignite coal. North Dakota is the only state in the region using lignite coal to produce electric power. North Dakota power plants have been located at the mine site to reduce transportation costs. In contrast, all other states in the region use imported subbituminous coal to generate electric power production. The vast majority of this coal is shipped by rail from Wyoming.

The report indicated the best means of measuring competitiveness in the coal industry is comparing coal costs per megawatt hour (CCMH). The resulting statistic depends on several variables, including the price of coal delivered to the producing plant, the energy-producing quality of the coal, and the efficiency of the plant burning the coal. Comparing the CCMH for 1991 and 1996 shows that significant changes occurred in regional competition. The CCMH for North Dakota was relatively stable at \$8.29 in 1991 and \$8.32 in 1996. Other states

in the region have experienced declines in CCMH because of importation of subbituminous coal from Wyoming at a greatly decreased cost. The CCMH in Nebraska has decreased from \$8.72 in 1991 to \$7.88 in 1996. Each state in this region has experienced a decrease in CCMH from 1991 to 1997 except North Dakota, which has experienced an increase of 5.7 percent. This compares with decreases of 34.9 percent for Nebraska, 33.1 percent for Missouri, 28.3 percent for South Dakota, and 19.5 percent in the national average CCMH.

Lignite productivity remained stable from 1992 to 1996. During that time period, productivity for subbituminous coal increased 49.1 percent, leading to a cost reduction of 21.3 percent. Increased productivity in subbituminous coal is attributable to thicker seams of coal, less overburden to remove and replace, larger mines, and improved equipment for subbituminous mining operations.

Another very significant edge for subbituminous coal competitiveness has been deregulation of rail rates, which has substantially reduced shipping costs for coal. Unit trains increased the number of tons that may be shipped. Greater density of track and improved rail technology have also increased the ability to ship coal.

The report emphasized it is important to remember that North Dakota tax and regulatory policy for the coal industry is not what has created the current economic problems faced by the lignite industry. Price reductions in subbituminous coal and transportation costs have been so significant that they are responsible for the competitive crisis faced by the industry. These events have focused attention on taxation policy because close competitive pricing of coal and electricity produced from coal depends on several variables and very small pricing differences spell success or failure in competition in the open market. The continued reductions in the price of delivered subbituminous coal have made it feasible to burn subbituminous coal in North Dakota power plants. This fact is important in North Dakota coal taxation and regulatory policymaking. North Dakota tax policy was established based on a coal industry that mines lignite coal at the generation plant and produces electric power for sale. Continuation of current trends will result either in a gradual loss of market share for the electric utility industry or increased use of subbituminous coal in North Dakota power plants. Either result would cause a reduction in mining of lignite coal in North Dakota. One option is to shift reliance from the coal severance tax to a tax on electric power production, which would generate tax revenues whether the source of generation is lignite or subbituminous coal.

During the 1997-98 study, Lignite Energy Council representatives reviewed the economics of using Wyoming coal in North Dakota generating plants. The price of Wyoming coal was \$3.12 per ton compared to \$10.56 per ton for lignite at the plant. The Wyoming coal would have been subject to transportation costs of \$8.02

per ton plus the North Dakota sales tax for imported coal of \$1.02 per ton (which has since been declared unconstitutional). This comparison indicated a total cost of Wyoming coal of \$12.16 per ton versus a cost of \$10.56 per ton for lignite. A more realistic measure of actual cost, however, requires converting the cost of coal to a price per million British thermal units produced. On this basis, the cost of North Dakota lignite was 78 cents per million British thermal units compared to 72 cents per million British thermal units for Wyoming coal delivered to the Leland Olds Station in North Dakota. Given this comparison, subbituminous coal was lower in price than lignite coal for burning in North Dakota power plants. Another significant consideration is that subbituminous coal burns with substantially lower levels of sulfur dioxide and nitrate oxide, which means that blending of subbituminous coal with lignite coal for burning in the future may become environmentally significant if air standards become more stringent.

Testimony

Law governing reclamation of mined lands is primarily the result of federal laws and regulations. The committee requested and received from the Public Service Commission an analysis of state reclamation laws and rules that are more stringent than corresponding federal requirements.

Most of the areas in which North Dakota imposes more stringent requirements than federal law and rules are the result of statutory requirements, rather than administrative rules. The most significant state provisions that are more stringent than corresponding federal requirements relate to soil handling and restoring productivity of agricultural lands after mining. These provisions were created by 1975 legislation and require a mining company, before obtaining final bond release on property, to demonstrate that reclaimed lands are as productive as similar undisturbed lands in the surrounding area. Soil suitability in the reclamation process is determined by a detailed soil survey. The Public Service Commission has used reclamation research findings to make rule changes to reduce unnecessary costs in soil handling by mining companies.

The committee requested and received from the State Department of Health an analysis of areas in which state statutes and rules are more stringent than corresponding federal laws and rules with respect to air quality, water quality, and solid waste management. Under NDCC Section 23-01-04.1, the State Department of Health is prohibited from adopting air quality, water quality, or solid waste rules more stringent than corresponding federal requirements unless it makes a specific finding after public hearings that corresponding federal requirements are not adequate to protect public health and the environment of the state. The areas in which state law and rules differ from federal requirements were described as areas in which there are no corresponding

federal requirements. New federal rules require each state to develop a plan to restore air quality in defined areas within 60 years. North Dakota will be required to develop such a plan by the year 2006. North Dakota is working with regional states to develop such a plan. Canadian generating facilities degrade air quality in North Dakota, and the federal rules allow recognition of the impact of foreign air pollution. Federal rules also allow recognition of smoke from forest fires that drift into the state from Canada or neighboring states.

According to a representative of the North Dakota Lignite Energy Council, the biggest regulatory threat the North Dakota lignite industry perceives in the next 10 years is with regard to Environmental Protection Agency rules. The lignite industry has been successful in lawsuits against enforcement of Environmental Protection Agency rules, but industry representatives believe this battle will continue. Federal efforts to limit carbon dioxide and nitric oxide emissions and possibly mercury emissions were described as potential threats to the North Dakota lignite industry. Regional haze limitations being pushed by the Environmental Protection Agency were described as the greatest current threat to the lignite industry. It was recommended to the committee that legislation on state regulatory laws and rules is not needed at this point.

The committee received information on the Lignite Vision 21 Project, described as a partnership of the lignite industry and state government. The objective of the Lignite Vision 21 Project is establishment of a baseload electric power generation plant using state-of-the-art mining and generation technology and the most recent environmental technology to improve efficiency and reduce emissions. It was estimated that emissions from the proposed facility would be about 10 percent of the emissions of existing facilities in the state.

The Lignite Vision 21 Project has received support from the Industrial Commission in the form of approval of \$10 million in matching funds for the development phase of the new generation plant. The amount approved is to come from the lignite research fund. Phase 1 of the Lignite Vision 21 Project involved analysis of environmental, generation technology, and transmission issues. The environmental study reviewed all current and pending industry regulations and identification of environmental issues and recommended solutions. The study concluded that all environmental concerns can be managed if cooperation is received. The advanced generation technology study determined that construction and operation of a 500 megawatt generation plant is feasible. The transmission study analyzed existing network constraints and lines for potential transmission upgrades and recommended a route for additional transmission with an export capability of an additional 800 megawatts if funding and approval is obtained. If the project proceeds as contemplated, the new generation plant could go on-line in 2007 or 2008.

According to the Lignite Energy Council, the lignite industry operates in a very competitive environment with competition from Canadian hydropower, subbituminous coal from Montana and Wyoming, and other fuel sources used to generate electricity in the Midwest Area Power Pool. Power sold in the Midwest Area Power Pool region operates on a margin of one-half of one mill per kilowatt hour. Because of this very small operating margin, tax and regulatory costs for lignite are critical issues, but recommendations for change would be premature until the litigation regarding sales and use taxes on imported coal is resolved.

Conclusion

The committee makes no recommendation regarding the lignite industry study.

FUELS TAX STUDY

Background

Motor Vehicle Fuel Tax

North Dakota Century Code Section 57-43.1-02 imposes a tax of 21 cents per gallon on gasoline and gasohol sold or used in this state. The tax is collectible by the dealer from the consumer on all retail sales. One cent per gallon of motor vehicle fuel tax on each gallon of fuel sold in the state is allocated to the township highway aid fund for allocation to townships for road purposes. The one cent per gallon for township highway aid is withheld from refunds otherwise available to agricultural, industrial, or governmental users. Except for amounts withheld from refunds or allocated to the township highway aid fund, all motor vehicle fuel tax revenues are allocated to the highway tax distribution fund.

Agricultural users of gasoline or gasohol who paid the tax at the time of purchase may claim a refund of taxes paid. The refund is reduced by seven cents per gallon, of which two cents is deposited in the agricultural fuel tax fund, one cent is retained in the highway tax distribution fund, and four cents is deposited in the agricultural research fund. Effective January 1, 2002, the amount withheld from agricultural use refunds will be reduced to six cents per gallon, with elimination of the one cent per gallon retained in the highway tax distribution fund.

Users of gasoline or gasohol for an industrial purpose are entitled to refund of taxes paid. The refund must be reduced by one-half cent per gallon and that amount is deposited in the agricultural fuel tax fund.

The state and political subdivisions are entitled to a refund of taxes paid on gasoline or gasohol used for construction, reconstruction, and maintenance of a public road or airport.

Special Fuels Tax

A tax of 21 cents per gallon is imposed by NDCC Section 57-43.2-02 on the sale or delivery of special fuels to any consumer. The dealer is required to collect and remit the tax on all retail sales to consumers.

Special fuels tax revenues are allocated to the highway tax distribution fund, except for one cent per gallon of the tax which is allocated to the township highway aid fund.

Effective for sales of special fuels after June 30, 1999, a "buy right" provision applies under which special fuels taxes are not refundable for agricultural, railroad, industrial, or governmental users. Such users are eligible for a reduced tax of two percent of purchase price, rather than 21 cents per gallon, for purchases of dyed special fuels used in unlicensed equipment for agricultural, railroad, industrial, or governmental purposes. The owner or operator of a licensed motor vehicle found to contain dyed special fuels in the fuel supply tank of the vehicle is subject to administrative fees from \$250 for the first violation to \$5,000 for the fourth and subsequent violations within three years. Fees for violations do not apply to a person who purchased dyed special fuels in another state or Canadian province and imported the fuel in the supply tank of a licensed motor vehicle if the state or province where the fuel was purchased does not prohibit its use in the vehicle. The fees also do not apply to a state or local government using dyed special fuels in licensed vehicles for road construction purposes.

Aviation Fuel Tax

Tax is imposed on aviation gasoline, kerosene, jet fuel, and any other motor fuel used by aircraft at a rate of eight cents per gallon. The tax is payable by a supplier or distributor on aviation fuel used, wholesale distribution of aviation fuel to a retailer, and direct sales of aviation fuel to a customer. All aviation fuel tax revenues are deposited in the state Aeronautics Commission's special fund. The moneys in the special fund are provided as a standing appropriation to the Aeronautics Commission for commission administration and for matching funds made available by political subdivisions or airport authorities that do not receive state assistance under NDCC Section 2-05-06.5. Funds allocated to governmental entities must be used for airport construction or improvement projects.

The consumer of aviation fuel is entitled to a refund of the tax paid after deduction of a special excise tax of four percent of the cost of the fuel. A person who has paid the tax on aviation fuel in North Dakota and sells the fuel in another state in which the fuel is taxable is entitled to a full refund of taxes paid in North Dakota. A person who purchased aviation fuel and paid tax in North Dakota and resells the fuel to an agency of the United States government is entitled to a refund of taxes paid.

Fuel Tax Allocation

The Constitution of North Dakota Article X, Section 11, provides:

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation

motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

The statutory provisions for deposit and allocation of fuel tax revenues are contained in NDCC Section 54-27-19. That section requires deposit of motor vehicle registration fees and fuel tax revenues in the highway tax distribution fund. Moneys deposited in the highway tax distribution fund are to be allocated monthly by the State Treasurer with 63 percent transferred to the Department of Transportation and placed in the state highway fund and 37 percent allocated to counties in proportion to the number of motor vehicle registrations credited to each county. Before each county receives its allocation, the State Treasurer must compute and deduct the incorporated cities' share of revenue allocated to the county. The cities' share of revenues is 27 percent of the amount allocated to the county. However, a weighting factor is included in the formula which provides that in each county having a city with a population of 10,000 or more the allocation is adjusted to increase the share allocated to each city.

1999 Legislation

House Bill No. 1019 extended until December 31, 2001, the additional one cent per gallon withheld from farmers' motor vehicle fuel tax refunds to be retained in the highway tax distribution fund. This additional withholding from refunds was scheduled to expire December 31, 1999.

House Bill No. 1130 eliminated the sunset provision that would have reverted the motor vehicle fuels and special fuels tax rates from 20 cents per gallon to 17 cents per gallon effective January 1, 2000. As compared with the 17 cents per gallon rate that would have been reinstated, this bill was estimated to generate an additional \$14.8 million of highway fund revenue during the 1999-2001 biennium and \$21.8 million of additional highway fund revenue for the 2001-03 biennium. For cities and counties, the additional revenue is estimated to be \$8.7 million for the 1999-2001 biennium and \$12.8 million for the 2001-03 biennium.

House Bill No. 1183 increased motor vehicle fuels and special fuels tax rates by one cent per gallon, from 20 cents to 21 cents. The 21 cent rate is "permanent" law, meaning it has no sunset provision. This bill also increased motor vehicle registration fees by \$1 per year on licensed motor vehicles, except pickup trucks 20 years old or older and farm trucks. Estimated

revenue increases resulting from this bill total \$11.3 million per biennium, \$7.1 million of which goes to the state highway fund and \$4.2 million of which is distributed to cities and counties. The fiscal note for the bill did not identify the share of increased revenue from the fuel tax rate change but Tax Department estimates were that an additional one cent per gallon motor vehicle and special fuels tax rate generates \$10.3 million per biennium, including \$6.5 million for the state highway fund and \$3.8 million for cities and counties.

Senate Bill No. 2177 revised administrative provisions under the fuels tax law. The bill was the product of a three-year study by the office of the Tax Commissioner and a Petroleum Marketers Association study group. The most significant changes made by the bill were:

1. Allowing a tax credit or refund for a fuel reseller when the tax has been paid and the fuel is resold to an agency of the federal government. The issue relates to credit card sales. Credit cards issued by major oil companies allowed adjustments to tax returns to cover these transactions but independent credit card company involvement shifted the burden of adjustments to retailers.
2. Imposing licensing and reporting requirements for fuel terminal operators.
3. Depositing motor vehicle fuel license fees in the highway tax distribution fund rather than the state general fund (to be consistent with the constitutional requirement that fuel tax revenues must be used for highway purposes).
4. Requiring importers and exporters of fuel for resale to supply proof of licensing in the jurisdiction from which the fuel is imported or to which the fuel is exported.
5. Requiring common or contract carriers hauling fuel to be licensed, to retain records, to be subject to audit, and to report diverted loads.
6. Creating a penalty and interest requirement for the aviation fuel tax (which lacked these enforcement provisions).
7. Creating a collection allowance of one percent, to a maximum of \$300 per month, for aviation fuel (to allow the same collection allowance that is allowed for special fuels taxes).
8. Consolidating licensing and reporting requirements for interstate motor carriers (to be compatible with the International Fuel Tax Agreement).

House Bill No. 1462 was commonly referred to during the 1999 legislative session as the "rack tax bill" although the bill as passed did not change the point of taxation to the "rack." The bill as passed reduced the shrinkage allowance for fuel suppliers, distributors, and retailers from a maximum of one percent to a maximum of .5 percent. The bill created the "buy right" provision, which requires users of special fuels for nonhighway

purposes to buy and use dyed special fuel, which is subject to the reduced rate of two percent, rather than the 21 cents per gallon rate for fuel used in licensed motor vehicles.

The most controversial provision of House Bill No. 1462, which was ultimately eliminated from the bill, would have moved the point of taxation for fuels taxes to the "rack," meaning a fuel storage and distribution terminal supplied by a refinery or pipeline. Reasons advanced for changing the point of taxation included decreasing the number of times fuel may change hands without taxes being collected and remitted, acceleration of tax collections, and a reduced number of fuel tax returns to improve compliance and auditing. Sixteen states have moved the point of fuel tax collections for diesel fuel to the "rack" since federal fuel tax imposition for diesel fuel was moved to the "rack" effective January 1, 1994. Only red-dyed diesel fuel is exempt from the federal "rack" tax. The primary purpose for the change in federal law was to reduce fuels tax evasion. Opponents of the "rack" tax provision argued that it will not stop fuel tax evasion and would place substantial financial stress on small- and medium-sized petroleum marketers, possibly causing some of these dealers to go out of business.

Testimony

Representatives of the North Dakota Petroleum Marketers Association restated their opposition to imposing fuels taxes at the "rack" because they believe that approach is unfair to mid-level distributors. They said if these distributors are put out of business, oil suppliers in the state will be consolidated into control by a much smaller number of larger companies. The committee received testimony from representatives of large, medium, and small petroleum marketing businesses. These individuals expressed concern with recordkeeping and reporting for fuel, which must be done for all fuel handled by the business, whether or not the fuel is taxable. Costs of computer hardware and software for recordkeeping is another area of concern and it was suggested that the two percent of collections allowance for dealers should be increased to three percent to equal the allowance in Minnesota. Petroleum Marketers Association representatives said it took a little adjustment for fuel dealers under the "buy right" provisions enacted in 1999 and some dealers needed additional storage tanks, but there is now little or no complaint among dealers about the 1999 changes.

Tax Department representatives reported very few problems or complaints from dealers or consumers with regard to 1999 fuels tax law changes. The department sent a newsletter to all consumers who claimed special fuels tax refunds for 1998 advising them of the new provisions. The department said fewer calls than expected were received after the newsletter was distributed.

Tax Department representatives initially met with representatives of the Internal Revenue Service in contemplation of entering a joint agreement with the Internal Revenue Service for testing of fuels believed to contain dye in excess of the allowable content for highway use. The Tax Department discovered that such an agreement with the Internal Revenue Service would have required the state to take samples for the Internal Revenue Service, and the Internal Revenue Service would piggyback federal penalties onto any penalties imposed by the state. Members of the committee expressed concern that samples might be used by the Internal Revenue Service for other purposes, such as testing for sulfur content. Rather than enter such an agreement with the Internal Revenue Service, the Tax Department entered an agreement with the Chemistry Division of the State Department of Health for testing for the presence of dye in diesel fuel samples collected by the Highway Patrol when violations are suspected. Committee members viewed various samples of dyed fuel containing concentrations of red dye from one part per million to 20 parts per million. The dye content of fuel added by refiners is approximately 20 parts per million of red dye. If one gallon out of 20 is dyed, that would be a concentration of approximately one part per million, which would be a violation. Estimated testing costs for tests by the Chemistry Division were about \$15 to \$20 per sample.

Search and seizure concerns with testing for dyed fuel raise the same constitutional issues that apply in other motor vehicle search situations. After consideration of search and seizure issues, the Highway Patrol follows the policy that the fuel tank of a vehicle will be sampled for the presence of red dye when the officer has a reasonable suspicion that a violation is occurring and that reasonable suspicion must derive from the officer's observations or reliable information furnished to the officer. The Highway Patrol does not do random sample testing.

Conclusion

The committee makes no recommendation regarding the fuels tax laws study.

FARM AND RANCH RETIREMENT STUDY

For most occupations and professions there are opportunities for retirement saving through tax deductible contributions and tax-deferred earnings. Farmers and ranchers are generally unable to take advantage of these opportunities because the reality of the agricultural economy is that earnings are put into property and operations. Upon retirement, a farmer or rancher sells or leases the property which results in capital gains or income taxes that are not eligible for special tax treatment.

Savings plans are available to employees, employers, and self-employed persons which allow

pre-tax dollars to be contributed and to grow tax-deferred until retirement. There is a substantial tax benefit to the investor in these types of plans and this allows accumulation of a much larger amount for retirement than would be available without these options. A wide range of options are available for retirement plans including 401(k) plans, 403(b) plans, 457 plans, individual retirement accounts (IRAs), Roth IRAs, simple plans, simplified employee pension (SEP) plans, Keogh plans, and others. These plans and their benefits to investors are governed by federal law.

For farmers and ranchers, deposits in a retirement fund represent a substantial risk because in the event of a disaster or in times of depressed commodity prices, poor production, or high interest rates those funds might have to be withdrawn and withdrawal may result in payment of penalties imposed by federal law.

Committee Consideration

It was suggested that individual retirement accounts allowed by federal law might be feasible investments for farmers and ranchers if federal law were changed to eliminate penalties for withdrawing funds if the funds are put into an agricultural operation. The rationale for the suggestion is that farmers and ranchers would not be discouraged from placing money in IRAs if they could have access to those moneys without penalty when necessary to support the farming or ranching operation.

It was suggested that an obstacle to retirement for farmers and ranchers is that the wealth they accumulate during a lifetime of work is tied up in the value of the farm or ranch property. An operator is faced with capital gains taxes upon sale of the property, which substantially reduces assets available for retirement. It is also apparent that much of the valuation increase subject to capital gains taxes upon sale of farm and ranch property is attributable to inflation. Examples were reviewed of situations in which capital gains taxes upon sale of farm or ranch property were in excess of the actual valuation increase of the property after discounting for inflation.

Congress has considered legislation to allow farm and ranch risk management (FARRM) accounts as a management tool for farmers and ranchers to defer income by setting it aside in tax-deferred accounts to be drawn upon as taxable income when needed in years of lower income. Proposals before Congress generally limit the time funds could be held in FARRM accounts to a maximum of five years. It was suggested that it may be more appropriate to limit the amount that may be held in FARRM accounts rather than the time the funds may be held, so these accounts could be used for retirement planning and other long-range benefits for farmers and ranchers.

Recommendation

The committee recommends Senate Concurrent Resolution No. 4003 urging Congress to reduce or eliminate the impediment of capital gains and estate taxes on passage of stewardship of family farms to succeeding generations. The resolution states that accumulation of value in family farm property is the result of a lifetime of hard work and sacrifice and that capital gains and estate taxes often require liquidation of family farm property and put families out of the farming business. The resolution points out that Congress has recognized the erosion of the family farming tradition caused by capital gains and estate taxes and Congress attempted to provide relief in 1999 legislation that was vetoed for other reasons.

The committee recommends Senate Concurrent Resolution No. 4004 urging Congress to provide a greater opportunity for farmers to participate in retirement investments by allowing withdrawals without penalty when necessary to support family farming operations. The resolution states that early withdrawal penalties that apply to retirement investments allowed by federal law make these investments infeasible for farmers. The resolution states that income of farmers is subject to influences beyond their control, and this lack of control merits special consideration in the establishment of policies regarding retirement savings and permitting farmers to withdraw funds from retirement accounts without penalty for legitimate needs of family farming operations would help to stabilize economies of rural communities.

The committee recommends Senate Concurrent Resolution No. 4005 urging Congress to reduce or eliminate capital gains taxes on inflationary valuation increases of farm and ranch property. The resolution states that Congress has recognized the unfairness of taxing inflationary increases as income by providing for indexing of income tax rate brackets, standard deductions, personal exemptions, and the earned income credit. The resolution states that the unfairness of taxing inflationary valuation increases can be devastating to owners of property held for a long period of time, such as family farm and ranch property, for which a valuation increase may be almost entirely attributable to inflation, with little or no real gain in value relative to the rest of the American economy.

The committee recommends Senate Concurrent Resolution No. 4006 urging Congress to enact legislation to allow FARRM accounts and to consider limiting the size of the accounts rather than the time funds may be held in the accounts. Farm and ranch risk management accounts would allow farmers and ranchers to set aside income in tax-deferred accounts to be drawn upon as taxable income when needed in years of lower income. The resolution states that it may be more appropriate to limit the amount that may be held in these accounts rather than the time funds may be held so

these accounts could be used for retirement planning and other longer-range benefits.

AGRICULTURAL BUSINESS INVESTMENT STUDY

Background

North Dakotans invest considerable sums of money outside the state. If viable agricultural processing businesses can be established which would attract a part of those investments to businesses within the state, there would be mutual benefit to investors and the agricultural economy. There are several programs under state law to encourage investment in and development of agricultural businesses.

Under NDCC Chapter 40-57.1, a city or county may grant a property tax exemption for up to 10 years for buildings and structures used in a project that produces or manufactures a product from agricultural commodities. In addition, payments in lieu of taxes in any amount may be allowed for any new or expanded business through the 20th year of project operations. This chapter also allows a qualifying project to obtain an exemption from state income taxes for up to five years upon approval by the State Board of Equalization.

Under NDCC Chapter 57-38.5, an investor in a qualified business may be entitled to a seed capital investment tax credit against income tax liability. This credit is only available on the individual long-form return. The taxpayer may qualify for a credit of 30 percent of the amount invested in qualified businesses for investments of at least \$5,000 and not more than \$50,000. The taxpayer may not take more than 50 percent of the credit in a single taxable year, and the credit is limited to not more than 50 percent of the taxpayer's tax liability. Unused credit may be carried forward for up to 15 taxable years. The aggregate amount of seed capital investment tax credits for all taxpayers in any taxable year is limited to \$250,000. A qualified business for purposes of the seed capital investment tax credit must have North Dakota residents as a majority of its employees in the North Dakota principal office or satellite operation, have its principal office in this state, have a majority of its business activity performed in this state or have a significant operation in North Dakota, and have a majority of its ownership interests owned by one or more individuals for whom operation of the business is their full-time professional activity.

Under NDCC Chapter 26.1-50, an insurer or group of insurers may establish a corporation or limited liability company to operate the North Dakota low-risk incentive fund. The fund may make loans to low-risk business for primary sector business projects in this state. An insurer participating in a loan under this chapter is entitled to a credit against insurance premium tax liability equal to the difference between interest earned on the loan and the amount the insurer could have earned at 300 basis points more than a comparable treasury security rate.

For purposes of loans, a primary sector business is defined as a business that adds value to a product, process, or service resulting in the creation of new wealth.

The Bank of North Dakota operates several programs that may be of assistance to farmers and agricultural businesses. The Department of Economic Development and Finance administers the North Dakota Development Fund, which is a means of providing capital for new or expanding business and administers the regional rural development revolving loan fund, which provides funding for primary sector business in rural areas of the state. The Agricultural Products Utilization Commission, a division of the Department of Economic Development and Finance, administers an agricultural prototype development program.

Committee Consideration

Agricultural Products Utilization Commission Programs

The committee reviewed programs administered by the Agricultural Products Utilization Commission. The commission administers five grant programs including programs for basic and applied research, marketing and utilization, cooperative marketing, farm diversification, and agricultural prototypes. The committee reviewed the programs and projects that have been funded under these programs. According to an Agricultural Products Utilization Commission representative, it is very difficult to establish a cooperative form of business that must rely on capital investment by producers because many farm and ranch operators cannot afford to invest in agricultural processing businesses.

Bank of North Dakota Programs

The committee reviewed Bank of North Dakota programs to assist development of agricultural businesses. The Bank has a two-part strategy to assist agriculture. The Bank's farm initiative is geared toward dealing with the agricultural crisis and consists of a financial assistance loan program, farm operating and family farm programs, and encouragement of young farmers to enter farming through a beginning farmer program and a first-time farmer program. The second phase of the Bank's strategy is to move agriculture into the future, which requires increasing value-added agricultural processing and diversifying and increasing the value of agricultural production. The Bank encourages investment in agricultural businesses through the agriculture partnership in assisting community expansion program, which provides an interest subsidy for farmers diversifying their operations. This program can also be used by farmers and ranchers to buy equity shares in a value-added processing facility or first-time purchase of irrigation equipment. The Bank has developed an Envest program to make available to all North Dakota residents the ability to purchase stock in a value-added

agricultural processing facility by financing the stock purchased at a below market interest rate.

Cooperative Business Structure

Many value-added agricultural projects in the state have chosen the cooperative as the preferred business structure for their organizations. The cooperative form of business limits opportunities for investment in a project by anyone other than a participating agricultural producer. One reason for choosing the cooperative form relates to federal tax considerations. Corporations are subject to two levels of taxation on earnings, including the corporate income tax and income taxes paid by individuals on distributions from the corporation. Earnings of a cooperative may be distributed as patronage dividends to members and avoid imposition of corporate income taxes. Cooperatives are also used as a way to keep any earnings among those who are producers of the commodities used by the cooperative. Opening the venture to outside investment means earnings must be shared with outside investors. Another incentive for the cooperative form of business exists under federal securities laws. An exemption under federal law allows organizers to avoid registration with the Securities and Exchange Commission for a tax-exempt cooperative. One requirement imposed upon cooperatives under the securities laws is 85 percent minimum ownership by producers, even though it is really not possible to structure for less than 100 percent ownership by producers. Another consideration under federal law is that a cooperative may be established to allow each member one vote in decisions of the cooperative. This differs from laws on corporations in which ownership of shares determines the number of votes an individual has in corporate decisions. Another consideration relates to business control because if the business is established as a corporation, a larger corporation could buy controlling interests in the venture once it has become profitable. There are ways under current law to structure a business to allow outside investment in value-added agricultural projects, but producers in North Dakota have shown a preference for the cooperative form of organization for reasons that outweigh attracting outside investment under their present circumstances.

Farmers Equity Trust Fund Proposal

Representatives of Renewable Resources Research Institute and the Cooperative Development Center suggested establishing a farmers equity trust fund. The fund could be capitalized by the sale of bonds to private investors and the moneys accumulated in the fund could be used by the Agricultural Products Utilization Commission to acquire ownership in value-added agricultural projects or for loans to value-added agricultural projects. Tax incentives could be provided for purchasers of bonds. One of the primary problems in establishing value-added agricultural projects is accumulating equity

capital to begin the project. The objective of the fund would be to attract equity capital, and it was suggested this fund would be an attractive investment alternative to investments in mutual funds and other investments that generally go to out-of-state investments. The committee requested preparation of a bill draft to establish a farmers equity trust fund and solicitation of comments from the Tax Department, Agricultural Products Utilization Commission, Bank of North Dakota, Municipal Bond Bank, and agricultural groups.

The Tax Department suggested some technical changes in the bill draft but did not estimate the fiscal effect of the bill due to lack of information on which to base an estimate.

A representative of the Agricultural Products Utilization Commission expressed support for the concept and the proposal to create a mechanism to finance the equity needs of value-added agricultural projects. The commission representative expressed concern over the commission's responsibilities under the bill draft regarding investment and loan decisions relating to value-added ventures because it would require additional staff to carry out the commission's responsibilities.

According to a representative of the Bank of North Dakota, a successful farmers equity trust fund program could augment agricultural loan programs available through the Bank of North Dakota. Areas of concern, however, were the potential of the farmers equity trust fund to duplicate programs of the Bank of North Dakota and exclusion of the private sector from the delivery system of the bond proceeds.

According to a representative of the Municipal Bond Bank, bonds issued under the farmers equity trust fund as it would exist under the bill draft would not be marketable without some form of credit enhancement, such as bond insurance or state or federal backing. Earnings from equity investments and interest on loans would be available to repay bondholders, but it may be many years before there is a return on the purchase of equity.

A North Dakota Farm Bureau representative expressed support for the concept of the farmers equity trust fund but expressed concern about whether investors would buy the bonds.

A representative of the Cooperative Development Center said farmers and livestock producers have spent down the equity in their operations in recent years. Several years of poor prices have forced agriculture producers to draw upon their equity. When an opportunity arises to invest in a value-added project or project to increase production, producers have no equity to draw upon for investment and the opportunity cannot go forward. It was suggested that the farmers equity trust fund would allow agricultural processing projects to overcome this obstacle.

In discussion of the bill draft, committee members noted there were unsolved questions about the bill draft

but proponents could work on these issues before the Legislative Assembly convenes in 2001.

1997 Kyoto Protocol

The committee reviewed information on the 1997 Kyoto Protocol treaty on global warming, which called for reduction in emissions of carbon dioxide to at least seven percent below 1990 levels and application of carbon permit fees to fuel users in industrial countries. Congress rejected the treaty but it has been suggested that implementation of the key points of the treaty is being attempted through federal regulations. A concern of committee members is that implementation would increase fuel costs in the United States, and these increases would fall particularly hard on farmers, who rely to a large degree on use of fuel in agricultural production.

Used Farm Machinery Sales and Use Tax

The committee considered a bill draft to provide a complete sales and use tax exemption for sales and use of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes. The bill draft was intended to continue and expand on the sales and use tax rate reduction created by passage of 1999 Senate Bill No. 2217. The 1999 legislation reduced the sales and use tax rate from three percent to 1.5 percent for used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes. The 1999 legislation expires June 30, 2001. The bill draft would provide a complete sales and use tax exemption for these items effective July 1, 2001.

The Tax Department estimated the fiscal effect of the bill draft to be a loss for a biennium of \$8.94 million to the state general fund and \$788,000 to the state aid distribution fund. One additional consideration regarding the fiscal effect is that under NDCC Section 57-39.2-01(3), a trade-in allowance is given for sales tax calculation purposes if the item being traded in will later be subject to sales tax when it is sold. This allowance was available under the reduced 1.5 percent sales tax rate but would not be available when a complete exemption is provided for used farm machinery and irrigation equipment. Some of the revenue loss would be offset by a gain in revenue from the denial of trade-in allowances and this gain was estimated at approximately \$926,000 for 1999 Senate Bill No. 2217. Adding the revenue gain from the denial of trade-in allowances to the overall revenue loss would show a net fiscal effect for the bill

draft of a loss of approximately \$8.8 million for a biennium.

Recommendations

The committee recommends House Bill No. 1051 to establish a farmers equity trust fund. The bill requires the Industrial Commission to establish the farmers equity trust fund at the Bank of North Dakota. The fund would be capitalized by the sale of bonds by the Industrial Commission, through the Bank of North Dakota. Moneys in the farmers equity trust fund could be used by the Agricultural Products Utilization Commission on behalf of the fund to acquire ownership interests in value-added agricultural projects or for loans to value-added agricultural projects. The bill requires a loan to be secured by ownership interests in the project. The bill allows the Agricultural Products Utilization Commission to establish procedures for applicants to apply for investments and loans and to establish procedures to evaluate applications for investments or loans. The bill allows various tax incentives for purchasing bonds sold to capitalize the farmers equity trust fund. An individual or corporate income taxpayer would be entitled to a credit of 20 percent of the amount invested in bonds. The bill requires the credit to be split between two taxable years and any credit may not exceed 50 percent of the taxpayer's tax liability for the year. The bill requires bonds to be held for three years to claim the income tax credit, to prevent taxpayers from purchasing and selling bonds just to acquire tax credits. The bill provides an individual long-form and short-form income tax credit for investments and a corporate income tax credit for investments. The bill provides that interest income from the bonds is deductible on the corporate return and the individual long-form and short-form returns.

The committee recommends House Concurrent Resolution No. 3004 urging Congress not to implement or allow implementation of the Kyoto Protocol because of the potentially disastrous impact on American agriculture. The resolution states that impact of the Kyoto Protocol on United States farmers would be devastating because farmers are forced to rely on fuels in agricultural production, and increased fuel costs would aggravate the farm crisis.

The committee recommends House Bill No. 1052 to provide a complete sales and use tax exemption for sales and use of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes. The bill would become effective July 1, 2001.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE COUNCIL FOR THE 1999-2000 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Council for study during the 1999-2000 interim under authority of North Dakota Century Code Section 54-35-03. The table also identifies statutory and other responsibilities assigned to interim committees and identifies the interim committee assigned the responsibility.

Bill or Resolution No.	Subject Matter (Committee)	1135 § 5	1462 § 8	2009 § 11	2012 § 22	2012 § 28	2012 § 31
1002 § 4	Study the impacts of court unification on the judicial system and on the effective provision of judicial services to state residents (Judiciary Committee)						
1003 § 19	Study higher education funding, including the expectations of the University System in meeting the state's needs in the 21st century, the funding methodology needed to meet these expectations and needs, and an accountability system and reporting methodology for the University System (Higher Education Committee)						
1004 § 8	Study the State Department of Health's master plan for its facilities and its definitive plan and cost estimates for upgrading its laboratory facilities, providing a state morgue for the state medical examiner, and bringing its facilities into compliance with applicable building code requirements (Budget Committee on Government Services)						
1004 § 9	Study the State Department of Health's comprehensive plan for a community health grant program (Budget Committee on Health Care)						
1019 § 16	Study the economic development efforts in the state, including the provision of economic development services statewide and the related effectiveness, the potential for the privatization of the Department of Economic Development and Finance, and the appropriate location of the North Dakota Development Fund, including the potential transfer of the fund to the Bank of North Dakota (Commerce and Labor Committee)						
		Make recommendations concerning the report of Job Service North Dakota regarding incentives to encourage an employee to decrease the length of time that employee receives unemployment compensation benefits and to encourage a negative employer to become a positive employer (Commerce and Labor Committee)					
			Study the application, enforcement, and administration under the fuels tax laws (Taxation Committee)				
				Prioritize crop protection product labeling needs, explore this state's authority under the federal Insecticide, Fungicide, and Rodenticide Act, identify the data necessary to enable registration of a use in a timely manner, determine the research necessary to fulfill data requirements, and request the Agriculture Commissioner to pursue specific research funding options from public and private sources (Crop Harmonization Committee)			
					Study residential treatment centers and residential child care facilities, including occupancy rates, the number of out-of-state residents, and the need for additional facilities (Budget Committee on Institutional Services)		
						Study the services provided by human service centers, including the appropriateness and justification for continuing human service center programs, the cost/benefit of human service programs, methods for evaluating the effectiveness and outcomes of human service center programs, and the need to establish priorities relating to human service center programs (Budget Committee on Human Services)	
							Study the feasibility and desirability of collocating the Developmental Center and the State Hospital at one location and of transferring additional buildings on the State Hospital grounds to the Department of Corrections and Rehabilitation (Budget Committee on Institutional Services)

2013 § 22	Study the role, mission, operation, and privatization of the Division of Independent Study, including educational services provided by the division to out-of-state students (Higher Education Committee)	2411 § 2	Study privatizing and contracting for services provided by state agencies (Budget Committee on Government Services)
2025 § 2	Study the number, qualifications, and selection criteria for vendors and providers selected by the Public Employees Retirement System Board for the defined contribution retirement plan and the deferred compensation program (Employee Benefits Programs Committee)	3007	Study of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education (Education Services Committee)
2114 § 3	Requires the Department of Human Services to report periodically to the Legislative Council, or an interim committee designated by the Council, on the progress of any negotiation with any tribal government to establish a pilot project for administration of a tribal family assistance grant from the United States Department of Health and Human Services, and requires the interim committee to report its findings and recommendations to the 57th Legislative Assembly (Budget Committee on Human Services)	3027	Study heritage tourism and the relationships among the State Historical Society, Parks and Recreation Department, Tourism Department, Department of Economic Development and Finance, and private sector promoters and developers of heritage tourism in the state (Commerce and Labor Committee)
2114 § 4	Study the implementation of the temporary assistance for needy families program in this state, the effectiveness of that program to accomplish welfare reform, the need for continuing legislative monitoring, the proportion of adults living in Indian country who are employed, and the efforts of the Department of Human Services to negotiate a pilot project under which the state would participate in the cost of providing services under a tribal family assistance grant (Budget Committee on Human Services)	3045	Study grain credit-sale contracts to determine the need to provide protection for farmers against grain warehouse and grain buyer insolvency (Agriculture Committee)
2162 § 13	Study the provision of education to public school students in this state and the manner in which education to public school students will be delivered in the ensuing 5, 10, and 20 years (Education Finance Committee)	3046	Study the challenges facing the delivery of health care in this state, including the concerns relating to reimbursement of hospitals for medical services, technological innovation, and possible regionalization of services (Budget Committee on Health Care)
2356 § 1	Study the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agricultural producers (Agriculture Committee)	3049	Study taxation and regulatory incentives for the lignite industry in order to improve its competitive position in the energy marketplace and to identify federal and international impediments to development of the lignite industry and potential state actions to address such impediments (Taxation Committee)
		3054	Study accreditation standards for elementary and secondary schools, including optional accreditation standards, the fiscal impact of accreditation standards, and the waiver of accreditation standards based on student performance (Education Finance Committee)
		3055	Study the extent of and remedies for damage caused to landowners from depredation by big game animals, waterfowl, and turkeys and damage caused to property by hunters - by Legislative Council chairman authorization, expanded to include damages caused to landowners by all game and

	nongame animals (Agriculture Committee)		future increases in the state's adult inmate population, including the impact of sentencing laws (Criminal Justice Committee)
3058	Study the chemical application industry and develop a method for assessing or determining damage due to misapplication and for resolution of disputes through mediation (Crop Harmonization Committee)	4027	Study issues related to the Missouri River in North Dakota (Garrison Diversion Overview Committee)
3067	Review and monitor the implementation of legislation enacted by the 56th Legislative Assembly which provides for the delivery of clerk of district court services through state funding and alternative methods (Judiciary Committee)	4030	Study the management responsibilities of the Industrial Commission, the mission and location of each entity within and under the direction of the commission, the membership of the commission, and the voting structure of the commission (Budget Committee on Government Services)
3070	Study health care in this state relative to access, quality, and cost to determine essential health care services, critical providers, access sites, and geographic, demographic, and economic issues relating to health care including health care insurance (Budget Committee on Health Care)	4031	Study the method by which the state funds special education services (Education Finance Committee)
4001	Hold legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress (Budget Section)	4032	Study the family law process in North Dakota with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods (Judiciary Committee)
4003	Receive report from the Department of Human Services on improving its administrative structure and enhancing its budget presentation methods and monitor implementation of the recommendations (Budget Committee on Human Services)	4036	Study the operation of the temporary assistance for needy families program in North Dakota as it relates to the relationship between the state and the federally recognized Indian tribes in the state (Budget Committee on Human Services)
4004	Study the possibility of creating an incentive package to assist rural communities and nursing facilities in closing or significantly reducing bed capacity and providing alternative long-term care services (Budget Committee on Health Care)	4040	Study the feasibility and desirability of establishing a mechanism to allow farmers and ranchers to shelter a portion of their income in an agricultural real estate asset retirement-type fund (Taxation Committee)
4005	Study the state of the law and technology with respect to legislative redistricting (Legislative Management Committee)	4041	Study potential tax incentives and regulatory relief that would encourage greater investment participation by North Dakota residents in agricultural business ownership (Taxation Committee)
4006	Study state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural areas (Budget Committee on Government Services)	4042	Study the feasibility and desirability of developing and implementing state-wide academic standards for and assessments of elementary and high school students and a system of accountability at the school and school district level (Education Finance Committee)
4015	Study the adult correctional system in North Dakota, including its functions, responsibilities, funding, and operation, and the causes of past and projected	4043	Study voter registration (Judiciary Committee)
		4044	Study the feasibility and desirability of

	consolidating under the School for the Blind all programs and services provided to children and adults who are blind or visually impaired (Budget Committee on Institutional Services)		and campus improvements financed by donations (Budget Section)
4048	Study the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses, sentencing of sexual offenders, and sexual offender commitment treatment (Criminal Justice Committee)	15-10-14.2	Receive report from the State Board of Higher Education with respect to the status of the University System (Higher Education Committee)
		18-11-15	Receive notice from a firefighters relief association concerning service benefits paid under a special schedule (Employee Benefits Programs Committee)
4050	Study the feasibility and desirability of implementing a grant preapproval process for every state agency, except institutions under the State Board of Higher Education (Budget Section)	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)
4051	Study the classification of criminal offenses throughout the North Dakota Century Code (Criminal Justice Committee)	20.1-02-16.1	Authorize the Game and Fish Department to spend moneys in the game and fish fund if the balance would be reduced below \$10,000,000 (Budget Section)
NDCC Citation	Subject Matter (Committee)		
4-02.1-18	Receive annual audit report from State Fair Association (Legislative Audit and Fiscal Review Committee)	25-04-02.2	Authorize Developmental Center at Westwood Park, Grafton, to provide services under contract with a governmental or nongovernmental person (Budget Section)
4-05.1-19	Receive report from Agricultural Research Board on its annual evaluation of research activities and expenditures (Agriculture Committee)	25-04-17	Receive report on writeoff of patients' accounts at Developmental Center at Westwood Park, Grafton (Legislative Audit and Fiscal Review Committee)
4-19-01.2	Approve use of moneys deposited in State Forester reserve account (Budget Section)	26.1-50-05	Receive annual audited financial statement and report from North Dakota low risk incentive fund (Legislative Audit and Fiscal Review Committee)
10-19.1-152	Receive annual audit report from corporation receiving ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)	28-32-02	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
10-32-156	Receive annual audit report from any limited liability company that produces agricultural ethanol alcohol or methanol in this state and which receives a production subsidy from the state (Legislative Audit and Fiscal Review Committee)	28-32-02	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking (Administrative Rules Committee)
15-03-04	Approve any purchase of commercial or residential property by the Board of University and School Lands as sole owner (Budget Section)	28-32-02	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)
15-10-12.1	Authorize the State Board of Higher Education to authorize the use of land for the construction of buildings	28-32-03.3	Determine whether an administrative rule is void and suspend the rule (Administrative Rules Committee)

28-32-15	Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)		describing enrollment statistics and costs associated with the children's health insurance program state plan (Budget Committee on Health Care)
36-22-09	Receive the audit report of the North Dakota Stockmen's Association (Legislative Audit and Fiscal Review Committee)	50-30-08 (temporary)	Receive annual reports from the Department of Human Services concerning grants or loans under the nursing facility alternative grant fund or alternative loan fund (Budget Committee on Institutional Services)
40-63-03	Receive annual reports from the Office of Intergovernmental Assistance on renaissance zone progress (Commerce and Labor Committee)	52-02-17	Receive report from Job Service North Dakota on condition of job insurance trust fund if balance is projected to go below \$40,000,000 (Budget Section)
46-02-04	Determine contents of contracts for printing of legislative bills, resolutions, and journals (Legislative Management Committee)	52-02-18	Receive report of biennial performance audit of the divisions of Job Service North Dakota (Legislative Audit and Fiscal Review Committee)
49-21-22.2	Review the operation and effect of North Dakota telecommunications law on an ongoing basis, and may review the effects of federal universal service support mechanisms on telecommunications companies and consumers in this state and may review the preservation and advancement of universal service in this state (Regulatory Reform Review Commission)	54-03-26	Determine the fee payable by legislators for use of personal computers (Legislative Management Committee)
50-06-01.8	Approve termination of any waiver obtained by the Department of Human Services for the training, education, employment, and management (TEEM) program or the demonstration project to combine the benefits under the aid to families with dependent children, temporary assistance for needy families, fuel assistance, and food stamp programs (Budget Committee on Human Services)	54-06-26	Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel (Legislative Management Committee)
		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)
		54-10-13	Determine when State Auditor is to perform audits of political subdivisions (Legislative Audit and Fiscal Review Committee)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)	54-10-15	Order the State Auditor to audit or review the accounts of any political subdivision (Legislative Audit and Fiscal Review Committee)
50-06.3-08	Receive annual report from the Department of Human Services on writeoff of recipients' or patients' accounts (Legislative Audit and Fiscal Review Committee)	54-14-03.1	Receive reports on fiscal irregularities (Budget Section)
		54-16-04	Approve transfers of money or spending authority which would eliminate or make impossible accomplishment of a program or objective funded by the Legislative Assembly (Budget Section)
50-09-29	Approve revised administration of the temporary assistance for needy families program by the Department of Human Services (Budget Committee on Human Services)	54-16-04	Approve transfers exceeding \$50,000 from one fund or line item to another unless necessary to comply
50-29-02	Receive annual report from the Department of Human Services		

	with court order or to avoid imminent threat to safety or imminent financial loss to the state (Budget Section)	54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)
54-16-04.1	Approve Emergency Commission authorization of any state officer to accept and expend federal moneys in excess of \$50,000 if the Legislative Assembly has not indicated an intent to reject the moneys (Budget Section)	54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans (Employee Benefits Programs Committee)
54-16-04.2	Approve Emergency Commission authorization of a state officer to accept and expend moneys from non-general fund sources in excess of \$50,000 if the Legislative Assembly has not indicated an intent to reject the moneys or program (Budget Section)	54-35-02.6	Study and review administrative rules and related statutes (Administrative Rules Committee)
		54-35-02.7	Overview of the Garrison Diversion Project and related matters (Garrison Diversion Overview Committee)
54-27-22	Approve use of capital improvements planning revolving fund (Budget Section)	54-35-02.8	As the Legislative Ethics Committee--Consider or prepare a legislative code of ethics (Legislative Management Committee)
54-27-23	Approve use of cash flow financing (Budget Section)	54-35-11	Make arrangements for 2001 session (Legislative Management Committee)
54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the state general fund to offset projected decrease in general fund revenues (Budget Section)	54-35-15.2	Review the activities of the Information Technology Department, statewide information technology standards, the statewide information technology plan, and major information technology projects; conduct studies; and make recommendations regarding established or proposed information technology programs and information technology acquisition (Information Technology Committee)
54-34.3-04	Receive annual reports from the Department of Economic Development and Finance on performance of all divisions of the department; on the amount of success and satisfaction the department has in meeting business client, economic developer, and community client needs and expectations; and on a comparison of dollars spent to the economic benefits created of all programs administered or supervised by the director (Commerce and Labor Committee)	54-35-18, 54-35-18.2	Study the impact of competition on the generation, transmission, and distribution of electric energy within this state (Electric Industry Competition Committee)
54-35-02	Review uniform laws recommended by Commission on Uniform State Laws (Judiciary Committee)	54-35-18.2 (temporary)	Study NDCC Chapter 49-03 and relevant statutes relating to the extension of electric lines and facilities and the provision of electric service by public utilities and rural electric cooperatives within and outside the corporate limits of a municipality (Electric Industry Competition 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)	54-35.2-02	Study local government structure, fiscal and other powers and functions of local governments, relationships between and among local governments and the state or any

	other government, allocation of state and local resources, and interstate issues involving local governments (Advisory Commission on Intergovernmental Relations)		conform to its information technology plan or comply with statewide policies and standards (Information Technology Committee)
54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority (Budget Committee on Government Services)	65-02-03.3	Receive annual report from director of the Workers Compensation Bureau and the chairman of the Workers Compensation Board of Directors (Legislative Audit and Fiscal Review Committee)
54-44-04	Receive report from the director of the Office of Management and Budget on the status of tobacco settlement funds and related information (Budget Section)	65-02-30	Receive report from director of the Workers Compensation Bureau, chairman of the Workers Compensation Bureau Board of Directors, and the auditor regarding the biennial performance audit of the Workers Compensation Bureau (Legislative Audit and Fiscal Review Committee)
54-44.1-07	Prescribe form of budget information prepared by the director of the budget (Budget Section)		
54-44.1-12.1	Object to any allotment by the director of the budget, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the action or failure to act is contrary to legislative intent (Budget Section)	65-06.2-09 (temporary)	Receive report from Workers Compensation Bureau regarding its safety audit of Roughrider Industries work programs and its performance audit of the modified workers' compensation coverage program (Commerce and Labor Committee)
54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action (Budget Section)	65-08.1-02	Authorize establishment of casualty insurance organization to provide extraterritorial workers' compensation insurance (Budget Section)
54-52.1-08.2	Approve terminology adopted by Public Employees Retirement Board to comply with federal requirements (Employee Benefits Programs Committee)		
54-56-03	Approve grants, not otherwise specifically approved by the Legislative Assembly, distributed by the Children's Services Coordinating Committee to children's services organizations and programs (Budget Section)		
54-59-12	Receive report from the chief information officer of the state regarding the coordination of services with political subdivisions, and from the chief information officer and the commissioner of the State Board of Higher Education regarding coordination of information technology between the Information Technology Department and higher education (Information Technology Committee)	Chapter 3 § 8	1999 Session Laws Citation Subject Matter (Committee) Approve expenditure of funds in addition to the minimum local match required for the Bismarck State College music addition and the Lake Region State College auditorium renovation (Budget Section)
		Chapter 3 § 11	Receive report from any higher education institution that spends local funds in excess of the local funds appropriated to the institution (Budget Section)
		Chapter 3 § 12	Authorize the State Board of Higher Education to purchase goods or contract for services for the service, access, growth, and empowerment project (Budget Section)
54-59-13	Receive report from the Information Technology Department regarding any executive branch state agency or institution that does not agree to	Chapter 11 § 4	Approve various line item transfers by the Highway Patrol (Budget Section)

- Chapter 12 § 2 Approve various line item transfers by the director of the Department of Transportation (Budget Section)
- Chapter 13 § 4 Approve various line item transfers by the Commissioner of University and School Lands (Budget Section)
- Chapter 14 § 2 Approve the distribution of statewide grants by the Children's Services Coordinating Committee which have not been specifically approved by the Legislative Assembly (Budget Section)
- Chapter 15 § 14 Receive report from the Industrial Commission and the Indian Affairs Commission regarding the status of home mortgage finance programs of the Housing Finance Agency available within Indian reservations located within the state (Budget Section)
- Chapter 16 § 2 Approve appropriation authority transfers between the divisions of the Department of Corrections and Rehabilitation (Budget Section)
- Chapter 16 § 3 Approve various line item transfers by the director of the Department of Corrections and Rehabilitation (Budget Section)
- Chapter 17 § 6 Receive report from Job Service North Dakota on the status of its asbestos abatement project (Budget Section)
- Chapter 19 § 5 Receive statement from any North Dakota ethanol plant receiving production incentives from the state regarding whether the plant produced a profit from its operation in the preceding fiscal year after deducting payments received from the incentive program (Budget Section)
- Chapter 21 § 13 Receive periodic reports during the 1999-2001 biennium from the State Board of Agricultural Research and Education on its activities associated with researching and developing market opportunities for biotechnologically enhanced crops (Agriculture Committee)
- Chapter 26 § 3 Approve various line item transfers by the State Auditor (Budget Section)
- Chapter 31 § 15 Receive periodic reports from the Agriculture Commissioner and the State Veterinarian during the 1999-2000 interim on the status of the bovine tuberculosis disease in cattle and associated costs (Budget Section)
- Chapter 34 § 6 Receive report from human service centers, the State Hospital, and the Developmental Center on the hiring of any full-time equivalent positions in addition to those authorized by the Legislative Assembly for the 1999-2001 biennium (Budget Section)
- Chapter 34 § 6 Receive report from human service centers, the State Hospital, and the Developmental Center on the hiring of any additional full-time equivalent positions in addition to those authorized by the Legislative Assembly for the 1999-2001 biennium (Budget Committee on Government Services)
- Chapter 34 § 18 Receive report from the Department of Human Services regarding \$500,000 of general fund reductions in the proposed budget request for the Northeast Human Service Center for the 2001-03 biennium (Budget Section)
- Chapter 34 § 19 Approve expenditures exceeding the amount appropriated to the Department of Human Services for traditional Medicaid grants during the 1999-2001 biennium (Budget Section)
- Chapter 34 § 19 Receive periodic reports from the Department of Human Services regarding the status of funding for traditional Medicaid grants (Budget Section)
- Chapter 34 § 25 Receive report from the Department of Human Services regarding its review of departmental program funding issues during the 1999-2000 interim (Budget Committee on Human Services)
- Chapter 34 § 26 Approve reduction by the Department of Human Services in nursing home limitations for direct and indirect cost categories from

- the levels included in the legislative appropriation for the 1999-2001 biennium (Budget Section)
- Chapter 34 § 35 Approve the expenditure by the Department of Human Services for a \$200,000 contingent appropriation for additional beds for traumatic brain-injured persons in western North Dakota (Budget Section)
- Chapter 35 § 18 Receive report from the Superintendent of Public Instruction regarding the content of the financial reports from school districts and specific actions taken to account for transfers from school district general funds, to eliminate or reduce variations in the reporting of data, and to ensure that the financial data is available in a form that allows for accurate and consistent comparisons (Education Finance Committee)
- Chapter 35 § 23 Receive report from the Superintendent of Public Instruction regarding any transfer of positions to the Division of Independent Study (Budget Section)
- Chapter 35 § 24 Receive report during the 1999-2001 biennium from the Superintendent of Public Instruction on the distribution of federal class size reduction initiative grants (Budget Section)
- Chapter 37 § 7 Approve various line item transfers by the director of the Office of Management and Budget (Budget Section)
- Chapter 37 § 11 Receive report from the Office of Management and Budget in December 2000 concerning the amounts provided by state agencies and institutions for salary increases for the second year of the biennium, line item transfers relating to the increases, the source of the funding, and the impact on the provision of agency services (Budget Section)
- Chapter 37 § 18 Approve transfers from the Bank of North Dakota to the state general fund to offset declines in general fund revenue collections (Budget Section)
- Chapter 37 § 19 Approve any state agency termination of a program for which federal funding has been terminated (Budget Section)
- Chapter 37 § 19 Approve state agency program termination, reduction, or change resulting from federal block grant changes (Budget Section)
- Chapter 38 § 4 Approve disaster claims relating to the spring 1997 flooding in the Red River Valley before any loans by the Bank of North Dakota to political subdivisions during the 1999-2001 biennium (Budget Section)
- Chapter 43 § 9 Approve various line item transfers by the Parks and Recreation Department (Budget Section)
- Chapter 45 § 7 Receive report from the State Engineer on its study of the feasibility and desirability of constructing dams and other impoundments in the Pembina River watershed for the purpose of reducing flows in the lower reaches of the Pembina River (Garrison Diversion Overview Committee)
- Chapter 64 § 5 Receive at least two reports during the 1999-2000 interim from the Agriculture Commissioner regarding the efforts to develop a single uniform process for the joint North American labeling of crop protection products (Crop Harmonization Committee)
- Chapter 90 § 5 Receive for the first four taxable years beginning after December 31, 1998, annual financial statements and a report from the governing board of the housing development fund analyzing the impact of the fund on the state's economy, business and employment activity generated by loans from the fund, and the effects of that activity on state and local tax revenues (Budget Committee on Government Services)
- Chapter 142 § 4 Receive report in August 2000 from the Department of Human Services on the progress of implementing child support income withholding through the state

- disbursement unit (Budget Committee on Human Services)
- Chapter 156 § 3 Approve the change or expansion of, or any additional expenditure for, a state building construction project approved by the Legislative Assembly (Budget Section)
- Chapter 171 § 2 Receive a progress report before October 1, 2000, from the Education Standards and Practices Board regarding implementation of reciprocal acceptance of teaching certificates issued by other states (Education Services Committee)
- Chapter 376 § 3 Receive annual report during the 1999-2000 interim from the Department of Human Services and the Board of Nursing regarding progress in preparing a joint recommendation regarding administration of medication, and by December 10, 2000, receive certification from the department regarding satisfaction of the reporting and recommendation requirements (Budget Committee on Health Care)
- Chapter 419 § 1 Receive periodic reports during the 1999-2000 interim from the executive director of the Department of Human Services regarding the establishment of a traumatic brain-injured facility in western North Dakota (Budget Committee on Institutional Services)
- Chapter 421 § 5 Receive periodic reports from the Department of Human Services on the progress in its efforts to determine the most reliable current data concerning the proportion of unemployed adults living in Indian country (Budget Committee on Human Services)
- Chapter 424 § 2 Receive a final progress report by June 30, 2000, from the Department of Human Services regarding the progress of the Alzheimer's and related dementia projects established under NDCC Section 50-06-14.4 (Budget Committee on Institutional Services)
- Chapter 429 § 4 Approve increased payments by the Department of Human Services to governmental nursing facilities (Budget Section)
- Chapter 429 § 5 Approve allocations from the health care trust fund in excess of \$8,715,279 by the Department of Human Services (Budget Section)
- Chapter 535 § 5 Approve any refinancing of debt relating to the Corporate Center in Grand Forks, any improvements to the Corporate Center requiring the incurring of indebtedness, or the voluntary sale of the Corporate Center (Budget Section)
- Chapter 535 § 9 Receive periodic reports from the State Engineer regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance and sources for repayment of bonds to finance construction of flood control projects, the Southwest Pipeline Project, a Devils Lake outlet, and a statewide water development program during the 1999-2000 interim (Budget Section)
- Chapter 535 § 9 Receive periodic reports from the State Engineer regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance and sources for repayment of bonds to finance construction of flood control projects, the Southwest Pipeline Project, a Devils Lake outlet, and a statewide water development program during the 1999-2000 interim (Garrison Diversion Overview Committee)
- Chapter 551 § 3 Receive report before the 2001 legislative session from the Workers Compensation Bureau on the results of its study of the awards provided to injured employees with permanent impairments caused by compensable work injuries (Commerce and Labor Committee)
- Chapter 556 § 5 Receive report before the 2001 legislative session from the Workers Compensation Bureau regarding the recommendations from its study of the benefits available to persons receiving

long-term disability or death benefits from the bureau (Commerce and Labor Committee)

LEGISLATIVE COUNCIL ASSIGNMENTS

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees.

Responsibility	Interim Committee
Review and report on budget data prepared by the director of the budget	Budget Section
Monitor status of state agency and institution appropriations	Budget Committee on Government Services
Study issues related to public safety and state liability in connection with the interstate transfer of convicted felons - Legislative Council chairman directive	Criminal Justice Committee
Statutory and constitutional revision	Judiciary Committee
Study voter residency requirements - Legislative Council chairman authorization	Judiciary Committee
Conduct public hearings on state-wide primary and general election ballot measures - Legislative Council chairman directive	Judiciary Committee
Review legislative rules	Legislative Management Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Council for study during the 1999-2000 interim under authority of North Dakota Century Code Section 54-35-03. The subject matter of many of these measures is the same or similar to the subject matter of studies that were given priority or of study assignments by the Legislative Council.

Bill or Resolution No.

Subject Matter

1003 § 20 Study tribally controlled colleges in this state and the United Tribes Technical College, including a review of funding sources and the number of Indian and non-Indian students attending each college, for the purpose of determining the feasibility and desirability of a grant program to assist the colleges in providing education to students who are less than one-quarter Indian

- 1003 § 23 Review North Dakota's participation in the student exchange program portion of the Midwestern Regional Higher Education Compact in the study provided in § 19 of the bill
- 1012 § 4 Study the fleet services program of the Department of Transportation, including a review of the cost-effectiveness of the program and the methods used to project and set motor pool rates
- 1012 § 5 Study the licensing of used motor vehicle dealers, including fees, dealer plates, and insurance coverage
- 1014 § 6 Study the uses of funds appropriated to the Children's Services Coordinating Committee, including a review of uses of funding received by the regional and tribal children's services coordinating committees and of the entities involved in generating refinancing funds
- 1183 § 4 Study the various sources of revenues for highway funding and comparisons with other states' highway funding systems to develop an optimum blend of reliable funding sources for highway purposes
- 1276 § 29 Study the State Board of Animal Health, including its membership, its representation, and the nature and scope of its regulatory authority over nontraditional livestock
- 2012 § 20 Study community services provided for the seriously mentally ill, including human service center services and the number of clients served
- 2012 § 21 Study the services provided by the state in its medical assistance program, including optional medical assistance services and the impact to the state and its citizens of providing those services
- 2012 § 29 Study the state and federal regulations relating to nursing homes, the impact of those regulations on the cost of care at North Dakota nursing homes, and state options for reducing regulations and the related reductions in cost of care
- 2012 § 30 Study the appropriateness of the state continuing rate equalization for private pay and public pay residents in nursing homes, including the fiscal impact on private pay and public pay residents of the repeal of rate equalization
- 2015 § 21 Study the establishment of agency performance incentive pilot programs; how agencies could develop, implement,

	administer, maintain, and evaluate these pilot programs; and the development of personnel policies and procedure manuals and how pay raises that may not be across the board are to be awarded as a reward and incentive for superior performance and the length of time they may be in effect		
2171 § 26	Study the impact to the State Department of Human Services, counties, court system, Division of Juvenile Services, adoption agencies, and families of the Adoption and Safe Families Act of 1997, including related state and county staffing requirements, court costs, adoption-related costs and issues, foster care-related impacts, and the impacts on families	3043	Study the clarity and continuity of end-of-life decisionmaking issues and related laws
		3050	Study methods of identifying and providing appropriate services to gifted students
		3051	Study the role and mission of the Milk Marketing Board
		3052	Study how the transportation infrastructure and services delivery system in this state affect the price for agricultural commodities grown or raised in this state
		3053	Study the feasibility and impact of mental health and substance abuse parity in this state
		3061	Study taxes imposed by state and local governments and the tax structure and balance among the various tax systems in North Dakota to provide a more equitable distribution of tax burdens
3001	Study the expansion of psychiatric and geropsychiatric training for primary care physicians at the University of North Dakota School of Medicine and Health Sciences	3062	Study alternative dispositions, including boot camps, for youth in the juvenile justice system
3002	Study American Indian long-term care and case management needs, access to appropriate services, and the functional relationship between state service units and the North Dakota American Indian reservation service systems	3064	Study enhanced funding for school districts for quality education and methods of reducing reliance on property taxes for school district funding
3003	Study the mill levy match program for senior citizens to determine if the program could be expanded to enhance home and community-based service availability	3068	Study the feasibility and desirability of an equitable sharing between the state and counties of the costs of providing facilities for the delivery of state-funded judicial and clerk of court services
3004	Study the swing-bed process	3071	Study the feasibility and desirability of licensing or franchising the "Dakota Maid" logo and trade name of the North Dakota Mill and Elevator Association and promoting the logo on a nationwide basis
3005	Study the feasibility and desirability of facilitating pro se representation in domestic relations matters	3072	Study the state of the law in this state and other states dealing with the administration of discipline in public schools
3011	Study state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural areas	3073	Study the feasibility and desirability of adjustments to income tax deductions for military and other federal retirees
3013	Study basinwide water management of the Red River Basin	3074	Study the amount and value of property owned by nonprofit organizations in this state and the impact of that ownership on local communities and the economy of this state
3014	Study the disparity in prices and the inconsistency in the registration of agricultural pesticides	3075	Study insurance discrimination against victims of domestic violence
3016	Study the qualifications, standards, and the monitoring requirements for guardianship services for incapacitated persons	3077	Study the feasibility and desirability of establishing and funding alternative high schools in rural areas
3019	Study the composition of the Oilseed Council and the impact, at the state and federal levels, of any changes in membership of the council		

3078	Study the equitable delivery of education services to students in this state and methods of accurately calculating and disbursing state funding for education		control of the State Board of Higher Education
3079	Study the relationship of rural subdivisions and townships	4038	Study options for the use of endowment funds for school districts and the feasibility and desirability of providing state matching funds
3080	Study the provision of air service and Amtrak service in this state	4039	Study methods by which qualified out-of-state students can be recruited by public institutions of higher education in this state and encouraged to enroll in post-secondary programs
4014	Study the method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender system	4045	Study alternative systems for the funding of services delivered to children and adults who are developmentally disabled
4019	Study the placement of motor vehicle license, registration, title, and excise tax collection services in the treasurer's office of each county in this state	4046	Study the appropriateness and adequacy of the laws on charitable gaming, including the financial remuneration allowed to owners of charitable gaming sites
4033	Study outmigration of North Dakota residents	4047	Study methods to preserve and provide access to state publications in an electronic format
4034	Study the farm cooperative business structure to determine how it may be used to expand dairy and livestock production to enhance rural economic development	4049	Study establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster areas
4037	Study the maintenance and funding of basic student health services at institutions of higher education under the		

2001 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1027 - Administrative Rules Committee Consideration Notice. This bill requires agencies to adopt a procedure to notify interested parties when rules of the agency will be considered by the Administrative Rules Committee. (Administrative Rules Committee)

House Bill No. 1028 - Emergency Rule Status Approval. This bill requires agencies to obtain Administrative Rules Committee approval of emergency status of rules that have been declared effective on an emergency basis. (Administrative Rules Committee)

House Bill No. 1029 - Rule Comment Filing. This bill requires agencies to file comments received on rules with the Legislative Council when the rules are filed for publication. (Administrative Rules Committee)

House Bill No. 1030 - Administrative Agencies Practice Act Revision. This bill revises the Administrative Agencies Practice Act to reorganize the provisions on administrative rulemaking without substantive change. (Administrative Rules Committee)

House Bill No. 1031 - Park District Mill Levy Consolidation. This bill consolidates the park district mill levies for recreation, pest control, insurance, forestry, facilities, handicapped programming, and health insurance with the park district general fund levy. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1032 - Advisory Commission on Intergovernmental Relations Membership. This bill increases the Advisory Commission on Intergovernmental Relations membership from 11 members to 12 members by adding a representative of the North Dakota School Boards Association. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1033 - Antitrust Investigation Procedure by Attorney General. This bill removes the requirement of district court approval before the Attorney General investigates antitrust violations. (Agriculture Committee)

House Bill No. 1034 - Antitrust Revolving Fund. This bill appropriates \$500,000 for a revolving fund for the investigation of antitrust violations. (Agriculture Committee)

House Bill No. 1035 - Telecommuting Incentive Program. This bill establishes a state employee telecommuting incentive program that provides incentives for state agencies to locate state employees away from a central office setting. (Budget Committee on Government Services)

House Bill No. 1036 - Medicaid Eligibility Review Period. This bill changes the income review period from monthly to quarterly for determining Medicaid eligibility

for children and pregnant women. (Budget Committee on Health Care)

House Bill No. 1037 - Temporary Assistance for Needy Families (TANF) Program Administration. This bill exempts parents who are victims of domestic violence from the 60-month TANF benefit limit and from the TANF work activity requirements. (Budget Committee on Human Services)

House Bill No. 1038 - North Dakota Vision Services - School for the Blind. This bill changes the name of the School for the Blind to North Dakota Vision Services - School for the Blind; removes outdated statutory provisions relating to the school; and provides that the school is a statewide service, resource, and referral center for all residents of this state who are blind or have a visual impairment. (Budget Committee on Institutional Services)

House Bill No. 1039 - State Venture Capital Fund. This bill provides for a North Dakota Venture Capital Fund program under which a seven-member North Dakota Venture Capital Authority designates a for-profit investment fund for lending to and investing private moneys in seed and venture capital partnerships and provides for a one-time issuance of \$5 million of state tax credits to the authority to offset losses under the program. (Commerce and Labor Committee)

House Bill No. 1040 - Entrepreneur Seed Fund. This bill establishes a North Dakota entrepreneur seed fund program under which a nine-member North Dakota entrepreneur seed fund board administers the fund, which is designed to be available to local entrepreneur seed fund applicants on a 500 percent local fund match basis to invest in North Dakota early-stage companies and small companies through equity or equity-type investments. The bill provides for a \$3 million appropriation from the general fund to fund the program for the 2001-03 biennium. (Commerce and Labor Committee)

House Bill No. 1041 - Seed Capital Investment Tax Credit Requirements. This bill allows the seed capital tax credit to be claimed on the state income tax short form; lessens the requirements to be classified as a qualified business under the seed capital investment tax credit law; allows taxpayers to claim the seed capital investment tax credit for any amount up to \$50,000; allows a seed capital investment tax credit to exceed 50 percent of the taxpayers' tax liability; provides seed capital investment tax credits for investments in one qualified business may not exceed \$250,000; decreases certain limitations on how a qualified business may use a seed capital investment; and increases the annual aggregate amount of seed capital investment tax credits

from \$250,000 to \$500,000. (Commerce and Labor Committee)

House Bill No. 1042 - Venture Capital Corporation Incorporation Requirements. This bill decreases the financial requirements for venture capital corporations to incorporate in the state. (Commerce and Labor Committee)

House Bill No. 1043 - Student Loan Payment. This bill provides for the Bank of North Dakota to administer a student loan payment program available to graduates of eligible postsecondary educational institutions in the state who are residents of the state and are employed in target industries located in the state. The bill provides for a \$2 million appropriation from the general fund to fund the program for the 2001-03 biennium. (Commerce and Labor Committee)

House Bill No. 1044 - Inmate Records. This bill provides for a new classification of inmate records--case history records--which are exempt from open records requirements; provides that medical, psychological, and social records are confidential; and provides that records with respect to the person's identity, location, criminal convictions, and projected date of release, except for the records of a person who is under protective management, are open records. (Criminal Justice Committee)

House Bill No. 1045 - NDCC Title 15 Revision. This bill rewrites those portions of Title 15 which relate to the Education Standards and Practices Board, superintendent and director dismissal, teacher dismissal, teacher employment contracts, teacher personnel issues, teacher qualifications, compulsory attendance, courses and curricula, kindergartens, home education, school finance, the state tuition fund, the payment of tuition, student transportation, open enrollment, special education, multidistrict special education units, boarding home care, child nutrition and food distribution programs, and school construction. (Education Services Committee)

House Bill No. 1046 - Title 15 Cross-Reference Reconciliation. This bill reconciles references to Title 15 found in other portions of the Century Code. (Education Services Committee)

House Bill No. 1047 - Challenged Voter Identification. This bill permits election board members and poll challengers to request identification from challenged voters in order to address voting eligibility concerns. (Judiciary Committee)

House Bill No. 1048 - Provisional Ballots. This bill provides a provisional ballot procedure for the ballots of challenged voters. (Judiciary Committee)

House Bill No. 1049 - Technical Corrections Act. This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the Century Code. (Judiciary Committee)

House Bill No. 1050 - Bill Delivery. This bill requires each bill not vetoed by the Governor to be filed with the Secretary of State within five legislative days after the bill has been delivered to the Governor and, if the Legislative Assembly is not in session, requires each bill delivered to the Governor to be filed with the Secretary of State within 15 days, Saturdays and Sundays excepted, after delivery of the bill to the Governor. (Legislative Management Committee)

House Bill No. 1051 - Farmers Equity Trust Fund. This bill establishes a farmers equity trust fund for use by the Agricultural Products Utilization Commission to acquire ownership interests in value-added agricultural projects or for loans to value-added agricultural projects. The bill provides income tax incentives for investors in the farmers equity trust fund. (Taxation Committee)

House Bill No. 1052 - Used Farm Machinery Sales and Use Tax Exemption. This bill provides a complete sales and use tax exemption for sales and use of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes. The bill becomes effective July 1, 2001, upon expiration of the existing one and one-half percent sales and use tax rate for these items. (Taxation Committee)

House Concurrent Resolution No. 3001 - Point-of-Origin Grain Grading. This resolution urges Congress to provide for a consistent system of grain grading based upon point-of-origin grain grading. (Agriculture Committee)

House Concurrent Resolution No. 3002 - Title 15 Revision Study. This resolution proposes a Legislative Council study of the completed revision of those provisions of Title 15 that relate to elementary and secondary education. (Education Services Committee)

House Concurrent Resolution No. 3003 - Legislative Redistricting Study. This resolution provides for the Legislative Council to study and develop a legislative redistricting plan or plans for use in the 2002 primary election. (Legislative Management)

House Concurrent Resolution No. 3004 - Kyoto Protocol Opposition. This resolution urges Congress not to implement or allow implementation of the Kyoto Protocol because of the potentially disastrous impact on American agriculture. (Taxation Committee)

SENATE

Senate Bill No. 2024 - City and County Public Employee Tobacco Education and Cessation Programs. This bill provides that cities and counties may use community health trust fund money to provide matching funds for city and county public employee tobacco education and cessation programs and provides that the community health trust fund be augmented by returning community health trust fund interest to the community health trust fund and by depositing water development trust fund interest in the community health trust fund. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2025 - Deerproof Hay Yard Program. This bill provides for a deerproof hay yard program and prohibits the Game and Fish Department from discriminating against or penalizing a land owner in the deerproof hay yard program for entering a hunting for compensation agreement. (Agriculture Committee)

Senate Bill No. 2026 - Information Technology Plans. This bill requires information technology plans prepared by state agencies to address the feasibility of telecommuting by selected employees. (Budget Committee on Government Services)

Senate Bill No. 2027 - Motor Vehicle Branch Office Pilot Project. This bill requires the Department of Transportation to establish a pilot project office site in three counties, with the county treasurer administering the motor vehicle registration programs. (Budget Committee on Government Services)

Senate Bill No. 2028 - Community Health Trust Fund Earnings. This bill provides that the interest earned on moneys in the community health trust fund must remain in that fund to be appropriated by the Legislative Assembly for public health programs rather than be transferred to the general fund. (Budget Committee on Health Care)

Senate Bill No. 2029 - Water Development Trust Fund Earnings. This bill provides that the interest earned on moneys in the water development trust fund must be transferred to the community health trust fund to be appropriated by the Legislative Assembly for public health programs rather than be transferred to the general fund. (Budget Committee on Health Care)

Senate Bill No. 2030 - Abstinence Education Grant Program. This bill appropriates \$150,000 from the general fund to the State Department of Health for state support of the sexual abstinence education grant program. (Budget Committee on Human Services)

Senate Bill No. 2031 - State Grant Preapproval Process. This bill requires state agencies, except institutions of higher education, to receive approval from the Emergency Commission before submitting an application for a grant that has not been approved or appropriated by the Legislative Assembly. If the Emergency Commission denies the grant application, the state

agency may submit the request to the Budget Section for consideration at its next meeting. (Budget Section)

Senate Bill No. 2032 - Commerce Department. This bill consolidates the Division of Community Services, Department of Economic Development and Finance, and Tourism Department into a department of commerce administered by a commissioner of commerce; creates a North Dakota commerce cabinet; and allows for creation of a privately funded North Dakota economic development foundation. (Commerce and Labor Committee)

Senate Bill No. 2033 - Renaissance Zones. This bill revises the renaissance zone law. Among the changes, the bill authorizes a statewide renaissance fund corporation, provides that an income tax exemption is effective beginning the year of the purchase or lease, removes the requirement that a petition for investment in a renaissance zone must include a plan for sale or refinancing that results in proceeds equal to or in excess of the proportional investment made by the renaissance fund corporation, provides that a taxpayer must be current on all taxes in order to be eligible for a tax exemption or credit under the renaissance zone law, and allows a city with a zone of less than 20 blocks to expand up to 20 blocks and allow these expanded blocks to have renaissance zone status for up to 15 years. (Commerce and Labor Committee)

Senate Bill No. 2034 - Civil Commitment of Sexual Offenders. This bill changes the state's civil commitment of sexual offenders statutes in the areas of venue, referrals, open records, and detention and removes the current exclusion of individuals with mental retardation. (Criminal Justice Committee)

Senate Bill No. 2035 - Sexual Offenders. This bill creates the crime of luring minors by computer, criminalizes the sexual initiation acts of street gangs, separates disorderly type behavior from the indecent exposure statute and makes indecent exposure a crime for which a person is required to register as a sexual offender, and expands the statute of limitations for gross sexual imposition to seven years. (Criminal Justice Committee)

Senate Bill No. 2036 - State Academic Content Standards. This bill provides for the adoption of state academic content standards by each school district and nonpublic school. (Education Finance Committee)

Senate Bill No. 2037 - Special Fund Continuing Appropriation. This bill provides a continuing appropriation of higher education institutions' special revenue funds including tuition and allows institutions to carry over at the end of the biennium unspent general fund appropriations. (Higher Education Committee)

Senate Bill No. 2038 - University System Budget Request and Appropriation. This bill requires the budget request for the University System to include budget estimates for block grants for a base-funding

component and for an initiative-funding component and a budget estimate for an asset-funding component and requires the appropriation for the University System to include block grants to the State Board of Higher Education for a base-funding appropriation and for an initiative-funding appropriation and an appropriation for asset funding. (Higher Education Committee)

Senate Bill No. 2039 - Capital Improvements. This bill allows the State Board of Higher Education to authorize campus improvements and building maintenance projects that are financed by donations, gifts, grants, and bequests if the cost of the improvement or maintenance is not more than \$500,000. (Higher Education Committee)

Senate Bill No. 2040 - Employee Bonuses. This bill allows higher education institutions to provide bonuses, cash incentive awards, and temporary salary adjustments to employees without reporting the activity as a fiscal irregularity. (Higher Education Committee)

Senate Bill No. 2041 - North Dakota University System. This bill recognizes the institutions of higher education under the control of the State Board of Higher Education as the North Dakota University System and requires the University System to develop a strategic plan that defines University System goals and objectives and to provide a performance and accountability report. (Higher Education Committee)

Senate Bill No. 2042 - Higher Education Statutory Responsibilities. This bill removes language regarding powers of the State Board of Higher Education and duties and responsibilities of higher education institutions which are no longer considered necessary. (Higher Education Committee)

Senate Bill No. 2043 - Powers and Duties of Information Technology Committee and the Information Technology Department. This bill requires the Information Technology Committee to review the cost-benefit analysis of any major project of the State Board of Higher Education or any institution under the control of the board if the project significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project. The bill also authorizes the Information Technology Department to purchase equipment and software through financing arrangements; specifies additional requirements that must be included in the department's business plan; replaces the statewide wide area network advisory committee with a state Information Technology Advisory Committee; changes the deadline for agencies submitting information technology plans from January 15 to March 15 of each even-numbered year; and provides that information collected by the Information Technology Department from agencies regarding information technology standards, compliance reviews, and plans is exempt from open records requirements. (Information Technology Committee)

Senate Bill No. 2044 - Property Division. This bill provides that property acquired by an individual spouse through inheritance or by gift, if titled and maintained in the sole name of the donee spouse, is the property of that party and is not subject to division upon dissolution of the marriage. (Judiciary Committee)

Senate Bill No. 2045 - Immunity. This bill provides for the appointment of child custody investigators and provides immunity for child custody investigators and guardians ad litem. (Judiciary Committee)

Senate Bill No. 2046 - Divorce and Separation. This bill consolidates the chapters dealing with divorce and separation into one chapter, reenacts the penalty for intentionally removing a child from the state in violation of a child custody order, applies the best interest standard to the annulment process, and removes and updates archaic language in the domestic relations statutes. (Judiciary Committee)

Senate Bill No. 2047 - Grandparent Visitation. This bill amends the grandparent visitation statute to comply with the North Dakota Supreme Court's ruling in *Hoff v. Berg*, 595 N.W.2d 285 (1999). (Judiciary Committee)

Senate Bill No. 2048 - Committee Meeting Compensation. This bill provides that a legislator is entitled to receive the same compensation for attending a meeting of a legislative committee between the organizational session and the regular session, as authorized by legislative rule, as the legislator is entitled to receive during a legislative session. (Legislative Management Committee)

Senate Concurrent Resolution No. 4001 - Institutions of Public Charity Property Tax Exemption Study. This resolution provides for a Legislative Council study of property tax exemptions for institutions of public charity that provide medical services and housing services. (Advisory Commission on Intergovernmental Relations)

Senate Concurrent Resolution No. 4002 - Federal Block Grant Legislative Hearings. This resolution authorizes the Budget Section to hold legislative hearings required for receipt of federal block grant funds. (Budget Section)

Senate Concurrent Resolution No. 4003 - Capital Gains and Estate Taxes on Farm Property. This resolution urges Congress to reduce or eliminate the impediment of capital gains and estate taxes on passage of stewardship of family farms to succeeding generations. (Taxation Committee)

Senate Concurrent Resolution No. 4004 - Retirement Fund Withdrawals for Support of Family Farming Operations. This resolution urges Congress to provide a greater opportunity for farmers to participate in retirement investments by allowing withdrawals without penalty when necessary to support family farming operations. (Taxation Committee)

Senate Concurrent Resolution No. 4005 - Capital Gains Taxes on Inflationary Increases of Farm and Ranch Property. This resolution urges Congress to reduce or eliminate capital gains taxes on inflationary valuation increases of farm and ranch property. (Taxation Committee)

Senate Concurrent Resolution No. 4006 - FARRM Accounts. This resolution urges Congress to enact legislation to allow FARRM accounts and to consider limiting the size of the accounts rather than the time funds may be held in the accounts. (Taxation Committee)

